

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY FRONTIER)	
GAS, LLC FOR APPROVAL OF)	
CONSOLIDATION OF AND ADJUSTMENT OF)	
RATES, APPROVAL OF AMR EQUIPMENT)	CASE NO.
AND A CERTIFICATE OF CONVENIENCE AND)	2011-00443
NECESSITY FOR INSTALLATION OF AMR,)	
PIPELINE REPLACEMENT PROGRAM,)	
REVISIONS OF NON-RECURRING FEES AND)	
REVISION OF TARIFFS)	

ORDER

On September 25, 2012, Ben F. Gardner, Treasurer for the Salyersville First Baptist Church¹ (“Petitioner”), filed a letter, which will be treated as a petition, requesting authorization to intervene in this case. Petitioner recommends that Kentucky Frontier Gas, LLC’s (“Frontier”) request to increase rates, as it relates to former B.T.U. Gas Company’s (“BTU”) customers now served by Frontier, is unwarranted considering the recent rate increase, the cost for well-head gas, and the flat inflation rate.

We first address Mr. Gardner’s role in this Petition, which he signed “For the Church” and has identified himself as “Treasurer” of the Petitioner. According to the records of the Kentucky Secretary of State, First Baptist Church, Salyersville, Kentucky, Inc., with Secretary of State organization number 0172960, was organized on December 14, 1982 and is currently in active status and good standing. Its principal

¹ First Baptist Church, Salyersville, Kentucky, Inc., Kentucky Secretary of State Business Services, [http://app.sos.ky.gov/ftshow/\(S\(lmhb12isOtt4vuuf3ixuyb2t\)/default.aspx?path=ftsearch&id=0172960&ct=09&cs=99999](http://app.sos.ky.gov/ftshow/(S(lmhb12isOtt4vuuf3ixuyb2t)/default.aspx?path=ftsearch&id=0172960&ct=09&cs=99999) (last visited Nov. 29, 2012).

office is identified as P.O. Box 616, Salyersville, Kentucky 41465. On information and belief, Mr. Gardner is not an attorney licensed to practice law in Kentucky.

Kentucky's highest court has held that the representation of individuals and entities before a state administrative agency constitutes the practice of law.² No person may engage in the practice of law in Kentucky by representing a person, other than oneself, or an entity without first obtaining a license to practice. The practice of law is:

[A]ny service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy in or out of court, rendered in respect to the rights, duties, obligations, liabilities, or business relations of one requiring the services.³

As to its own proceedings, this Commission has adopted a similar position and has required that those representing the interests of others before us be licensed attorneys. In a previous case, the Commission ordered that:

[A]ny attorney who is not licensed to practice in the State of Kentucky and who seeks to represent a client or employer before this Commission must engage a member of the Kentucky Bar Association. It logically follows that if an unlicensed attorney may not represent a client before this Commission, neither may a layman.⁴

In Case No. 2012-00020, the application was not accepted for filing because an attorney had not signed the application.⁵ Although Mr. Gardner's request for

² *Kentucky State Bar Association v. Henry Vogt Machine Co.*, 416 S.W.2d 727 (Ky. 1967).

³ Kentucky Supreme Court Rule 3.020.

⁴ Administrative Case No. 249, *Practice Before the Commission by Attorneys Non-Licensed in the Commonwealth of Kentucky* (Ky. PSC Jun. 15, 1981) at 2. See also Case No. 2004-00348, *Howard Keen v. Carroll County Water District # 1* (Ky. PSC Oct. 15, 2004).

⁵ Case No. 2012-00020, *Application of Madison County Utilities District for a Certificate of Public Convenience and Necessity to Construct and Finance a Water Line Replacement Project*, Letter from Jeff DeRouen, Executive Director, Public Service Commission, to Jim Carr and John Carr, Madison County Utilities District (Jan. 23, 2012).

intervention on behalf of the Petitioner has not been instantly rejected herein, the above requirements for representation of the Petitioner must be adhered to going forward.

The Attorney General (“AG”), who has not intervened in this case, is the only person with a statutory right to do so pursuant to KRS 367.150(8)(b). That statute authorizes the AG to participate “on behalf of consumer interests.” Intervention by all others is permissive and is within the sound discretion of the Commission.⁶

In exercising our discretion to determine permissive intervention, there are both statutory and regulatory limitations on the Commission. 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.”⁷ The regulatory limitation is set forth in 807 KAR 5:001, Section 3(8). That regulation requires a person seeking intervention to file a request in writing which “shall specify his interest in the proceeding.”⁸ That regulation further provides that:

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.⁹

It is under these statutory and regulatory criteria that the Commission reviews a motion for permissive intervention.

⁶ *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1966).

⁷ *EnviroPower, LLC v. Public Service Comm’n*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007).

⁸ 807 KAR 5.001, Section 3(8)(b).

⁹ *Id.*

Based on a review of Petitioner's request, the Commission would customarily find that the Petitioner does not have a special interest in the proceeding which is not otherwise adequately represented, nor has the Petitioner shown the likelihood to present issues or to develop facts that will assist the Commission in resolving this matter. Petitioner's claim that (1) the rate increase is unwarranted when considering the recent rate increase; (2) the cost for well-head gas; and (3) the flat inflation rate is not sufficient to prove that the Petitioner has a special interest in these proceedings. There are approximately 3,366¹⁰ Frontier customers, including approximately 462¹¹ former BTU customers, with many of these customers having similar concerns as the Petitioner, which does not give Petitioner an interest different from or greater than other customers who may be affected in this matter.

Although the requisites of KRS 278.040(2) and 807 KAR 5:001, Section 3(8), have not been satisfied by the Petitioner in this case, in using our discretion to determine permissive intervention, the Commission has considered the fact that the AG has not intervened in this case "on behalf of consumers interests." The Commission, being otherwise sufficiently advised, finds that the Petitioner should be granted intervention with the full rights of a party in this proceeding. The Commission also finds that an attorney licensed to practice law in Kentucky must represent the Petitioner and appear on Petitioner's behalf going forward.

On September 19, 2012, the Commission adopted a procedural schedule in this case, prior to determining the Petitioner's intervenor status. In order to afford Petitioner

¹⁰ Kentucky Frontier Gas, LLC's Response to Commission Staff's Second Request for Information, filed November 7, 2012, Item 7.

¹¹ *Id.*

the opportunity to request information from Frontier and to file comments regarding Frontier's application, the Commission finds that the procedural schedule adopted on September 19, 2012 should be modified going forward. Frontier's application and all subsequent filings in this matter can be found at the Kentucky Public Service Commission's Website at <http://psc.Ky.gov/Home/Library?type=Cases&folders=2011cases/2011-00443>.

IT IS THEREFORE ORDERED that:

1. Petitioner is granted full intervention.
2. Petitioner shall be represented by an attorney licensed to practice law in Kentucky.
3. Petitioner shall direct its intervention participation to issues relevant to Frontier's application.
4. The procedural schedule established by the Commission on September 19, 2012 is modified going forward to conform to the procedural schedule set forth in the Appendix.
5. Petitioner 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.
6. Should Petitioner file documents of any kind with the Commission in the course of these proceedings, Petitioner shall also serve a copy of said documents on all other parties of record.

By the Commission

ENTERED
DEC 13 2012
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

Executive Director

Case No. 2011-00443

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2011-00443 DATED DEC 13 2012

- Intervenor's requests for information to Frontier shall be
filed no later than.....12/27/12

- Frontier shall file responses to requests for information
from Intervenor's no later than.....01/10/13

- Intervenor's shall file comments relating to Frontier's
application, including responses to requests for information,
no later than.....01/23/13

- Frontier shall file a reply to Intervenor's comments
no later than.....02/06/13

- Last day for Frontier to publish notice of hearing..... To be scheduled

- Public Hearing to be held in Hearing Room 1
of the Commission's offices at 211 Sower Boulevard,
Frankfort, Kentucky, for the purpose of cross-examination
of witnesses of Frontier and Intervenor's..... To be scheduled

- Simultaneous Briefs, if any, shall be filed To be scheduled

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