

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of:

APPLICATION OF BULLITT UTILITIES, INC.,) CASE NO.
FOR A CERTIFICATE OF CONVENIENCE AND) 2014-00255
NECESSITY, AND SURCHARGE FOR SAME)

ATTORNEY GENERAL'S REPLY TO BULLITT UTILITIES' MOTION
TO INTRODUCE TESTIMONY

Comes now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and requests that the Commission deny Bullitt Utilities' Motion to Introduce Testimony of Chris Crumpton and affirm the Commission's decision to strike all testimony and exhibits of Chris Crumpton from the record.

During the 9 June 2015 hearing in this matter, Vice-Chairman Gardner sustained the Attorney General's objection to entrance of the pre-filed direct testimony and exhibits of Chris Crumpton into the record.¹ The Vice-chair stated "I'm agreeing [with the Attorney General] that with no opportunity to cross-examine, I'm not allowing [Mr. Crumpton's testimony and exhibits in]".² The Vice-Chair further explained that Bullitt Utilities must provide a legal basis for the Commission to overrule its earlier decision denying admittance of Mr. Crumpton's testimony and exhibits.³ Bullitt Utilities' Motion does not provide a single legal argument or citation from which the Commission could rely on to allow the admission of Mr. Crumpton's testimony and exhibits into the record. Bullitt Utilities failed to meet the necessary burden, and cannot support its position with any legal justification for why due process and a right to fair hearing should not apply in this proceeding.

¹ Video Transcript at 12:09:00-12:10:30.

² VT at 12:11:48-12:12:01.

³ VT at 12:33:19-12:33:26.

Precedent exists for denying the entrance of Chris Crumpton's testimony and exhibits, as allowing the evidence into the record would violate the procedural due process rights of the intervenor. This Commission has previously ruled "The Commission must ensure that all parties to its proceedings are afforded due process. Despite the relaxed nature of Commission proceedings, each party must still have the opportunity to confront and cross-examine adverse witnesses."⁴ No opportunity has been made available in this matter to confront and cross-examine Mr. Crumpton or to test the credibility of the information he presented.

While the Attorney General was able to cross examine Mr. Crumpton in Case No. 2015-00163, the issues in that matter and this are not identical. The Commission previously considered this issue and ruled in favor of the cross-examining intervenor:

While the Defendants had an opportunity to cross-examine Ms. Thomas in Case No. 96-161, the issues involved in that case are not identical to those in this proceeding. To permit the incorporation of her testimony, therefore, would deprive the defendants of their right to due process.⁵

Further, in that instance, there was no showing made that the witness was unable to testify. In this instance, Mr. Crumpton was available to testify, Bullitt Utilities merely failed to successfully communicate to Mr. Crumpton that his presence was expected at the hearing. In its own Motion, Bullitt Utilities described the contact with Mr. Crumpton prior to the hearing, and failed to allege one single fact as to why the witness was not able to appear. Being out of cell phone range in Laurel County Kentucky does not excuse the fact that Mr. Crumpton was aware of the proceedings, was involved in the preparation of documents for the proceedings, and yet still failed to appear to testify in the proceedings. As such, allowing the entrance of Chris

⁴ Case No. 89-349, *In the Matter of: Kentucky Utilities Company v. Henderson-Union Rural Electric Cooperative Corporation* (Ky. PSC May 21, 1990).

⁵ Case No. 96-362, *In the Matter of: Auxier Water Company Complainant v. City of Prestonsburg and Prestonsburg City's utilities Commission Defendant* (Ky. PSC Feb. 21, 1998).

Crumpton's testimony and exhibits would violate the Attorney General's due process rights, and right to a fair hearing.

Bullitt Utilities' request to schedule yet another hearing or a deposition is wholly improper. Bullitt Utilities has requested and been granted deadline extensions an even dozen instances, even before the current request to further extend the matter.⁶ A briefing schedule has already been set and the Commission has ordered a cut-off date after which no additional expenses will be considered for recovery. Allowing an additional hearing or deposition to take place would further delay the deadline for submittal of briefs, and thus unnecessarily delay the conclusion of this matter. If the Commission does allow Mr. Crumpton's testimony to be entered into the record, the Attorney General requests that an additional hearing be scheduled, the briefing scheduled until at least three weeks after the conclusion of the second hearing, and public notice be provided as described in 807 KAR 5:001, Section 9.

WHEREFORE, the Attorney General requests an Order from the Commission consistent with his positions as set forth herein.

Respectfully submitted,

JACK CONWAY
ATTORNEY GENERAL



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⁶ (1) Letter from Robert Moore to Linda Faulkner, dated August 20, 2014; (2) Letter from Robert Moore to Linda Faulkner, dated September 24, 2014; (3) Letter from Robert Moore to Linda Faulkner, dated October 16, 2014; (4) Letter from Robert Moore to Linda Faulkner, dated November 21, 2014; (5) Motion filed January 09, 2015; (6) Motion filed March 23, 2015; (7) Motion filed March 26, 2015; (8) Motion filed April 13, 2015; (9) Motion filed April 13, 2015; (10) Motion filed April 15, 2015; (11) Motion filed April 15, 2015; (12) Motion filed June 5, 2015.


Certificate of Service and Filing

Counsel certifies that an original and ten photocopies of the foregoing were served and filed by hand delivery to Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; counsel further states that true and accurate copies of the foregoing were mailed via First Class U.S. Mail, postage pre-paid, to:

Bullitt Utilities, Inc. dba Hunters Hollow Sewer
1706 Bardstown Road
Louisville, KY 40205

Honorable Robert C Moore
Hazelrigg & Cox, LLP
415 West Main Street
P.O. Box 676
Frankfort, KENTUCKY 40602

this 22nd day of June, 2015



Assistant Attorney General