

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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COMMISSION

In the Matter of:

ALLEGED VIOLATIONS OF KRS 278.020, KRS 278.160,) CASE NO.
KRS 278.140, AND 807 KAR 5:006, SECTION 4(2)) 2017-00120

ATTORNEY GENERAL'S REPLY

Comes now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and submits his Reply to The Gas Group/Basil Pollitt's (hereinafter "Pollitt") Objection to Motion to Intervene of Attorney General[,] Objection to Motion for Expedited Discovery of Attorney General[,] Exceptions to Commission Order of 7-26-17 [&] Exceptions to Commission Order of 8-3-17 (hereinafter "Objection"), and in support of his Motion to Intervene and Motion for Leave to Conduct Expedited Discovery.

Pollitt's Objection to the Attorney General's Motion to Intervene was filed outside of the time afforded for responses to motions by Commission regulation. The Attorney General filed his Motion into the Commission record on July 25, 2017, and service of the Motion was certified to all parties of record as of the same date, via U.S. Mail.¹ Commission regulation provides parties seven (7) days from the date of filing of a motion to respond.² The final date a response could have been filed in accordance with the applicable regulation was August 1, 2017.³

¹ Attorney General's Motion to Intervene, Case No. 2017-00120; 807 KAR 5:001 Section 6; 807 KAR 5:001 Section 4.

² 807 KAR 5:001 Section 5(2).

³ See, 807 KAR 5:001 Section 4 (7).

Nevertheless, should the Commission consider the Objection despite its untimely filing, the Attorney General wishes to provide a substantive Reply to the arguments made therein. While the Attorney General appreciates opposing counsel's attempt at statutory and regulatory interpretation, there was at least one glaring omission regarding the Attorney General's statutory right to intervene. Although KRS 367.150 is extensively referenced and analyzed in the Objection, an operative portion of the law was ignored. Specifically, in KRS 367.150(8)(b), which opposing counsel cited in full,⁴ the law provides for the Attorney General, "[t]o be made a real party in interest in any action on behalf of consumer interest involving a quasijudicial *or* rate-making proceeding ... whenever deemed necessary and advisable in the consumer's interest by the Attorney General."⁵ Regardless of the assertions otherwise, the Attorney General's ability to appear before this Commission and be made a "real party in interest" or to "be entitled to the full right of party," is not limited to rate-making proceedings.⁶

Importantly, the arguments made by opposing counsel are not novel. The Attorney General has practiced before this Commission pursuant to his statutory authority for years, and on numerous occasions, his ability to do so has been challenged.⁷ Nevertheless, the Commission has consistently, and rightfully, made its position clear on the Attorney General's right to intervene in cases before it, and has noted the Attorney General's right to

⁴ Objection to Motion to Intervene of Attorney General Objection to Motion for Expedited Discovery of Attorney General Exceptions to Commission Order of 7-26-17 Exceptions to Commission Order 8-3-17 ("Objection"), Case No. 2017-00120, unnumbered p. 3 (Ky. P.S.C. August 7, 2017).

⁵ Emphasis added.

⁶ KRS 367.150(8)(b); Order, Case No. 2017-00120 (Ky. P.S.C., Filed July 26, 2017).

⁷ See *In the Matter of: Application of Caldwell County Water District For Rate Adjustment Pursuant to 807 KAR 5:076*, Case No. 2016-00054; See *In the Matter of: Application of South Kentucky Rural Electric Cooperative Corporation for Approval to Purchase the Fixed Assets of the Monticello Electric Plant Board, Monticello, KY*, Case No. 2007-00374.

intervene is unique.⁸ Crucially, the Commission has previously considered nearly the exact arguments made by opposing counsel, dismissing them while writing:

In its second pleading, South Kentucky objects to the AG's request to intervene, arguing that the AG failed to timely seek intervention as required under 807 KAR 5:001, Section 3(8). South Kentucky also contends that the AG has no statutory right of intervention in a non-rate case. South Kentucky argues that KRS 367.150(8)(b) allows the AG to intervene as a real party in interest in rate cases, but that no such right exists for other proceedings before the Commission. Rather, South Kentucky asserts that KRS 367.150(8)(a) controls in this instance. South Kentucky maintains that KRS 367.150(8)(a) allows the AG to appear before a regulatory body on behalf of consumers subject to a showing of a specific, valid reason authorizing the AG's intervention.

The Commission notes that the AG's motion to intervene was granted on November 8, 2007, the same day that South Kentucky's objections were filed. Consequently, the Commission will treat South Kentucky's objection as a request for reconsideration. Based on South Kentucky's request, the Commission finds that the AG's motion to intervene was filed on November 2, 2007. At that time, the procedural schedule for this case allowed for the filing of comments by November 15, 2007. Given that the time period for the filing of comments had not yet expired, the Commission finds the AG's motion to intervene to have been timely filed.

Contrary to South Kentucky's assertions, both KRS 367.150(8)(a) and (b) apply with equal force in granting the AG a statutory right of intervention in any proceeding before the Commission. The clear and express language of KRS 367.150(8)² authorizes the AG to appear before any rate-making or regulatory body or agency to represent consumers' interests as well as to be made a real party in interest to any action involving a quasi-judicial proceeding of any state commission or rate-making body whenever deemed necessary and advisable by the Attorney General. KRS 367.150(8) does not limit the AG's intervention as a matter of right to only rate proceedings, nor does it require the AG to provide specific, valid reasons for his intervention in any proceeding before the Commission. Accordingly, the Commission will overrule South Kentucky's objections to the AG's intervention.⁹

⁸ Order, *In The Matter Of: Electronic Application Of Kentucky Power Company For (1) Adjustment Of Its Rates For Electric Service; (2) An Order Approving Its 2017 Environmental Compliance Plan; (3) An Order Approving Its Tariffs And Riders; (4) An Order Approving Accounting Practices To Establish Regulatory Assets And Liabilities; And (5) An Order Granting All Other Required Approvals And Relief*, Case No. 2017-00179, p. 2 (Ky. P.S.C., Filed August 3, 2017) Granting intervention to Kentucky Commercial Utility Customers.

⁹ Order, *In the Matter of: Application of South Kentucky Rural Electric Cooperative Corporation for Approval to Purchase the Fixed Assets of the Monticello Electric Plant Board, Monticello, KY*, Case No. 2007-00374, pg. 2-4 (Ky. P.S.C., Filed December 13, 2007).

Pollitt's arguments regarding the statutory interpretation of KRS 367.150 and, as a *non sequitur*, the further requirements of 807 KAR 5:001, Section 4(11), fall flat when considered against controlling Commission precedent. As the Commission recognized in Case No. 2007-00374, the Attorney General's duty to represent consumer interests under KRS 367.150 is not limited to "rate making."¹⁰ More broadly, the Attorney General's right to standing extends to any case in which the public interest is implicated.¹¹ Furthermore, the Attorney General does not limit his participation in proceedings depending on whether or not opposing parties perceive the issue at hand "implicates 'consumer interests.'"¹²

Throughout the history of this case and the previous case before it, Pollitt has deliberately declined or failed to fully participate and cooperate with the Commission. In Case No. 1999-00130, Pollitt nor his counsel appeared at the scheduled hearing, though the summons and show cause Order were personally served.¹³ In the present matter, Pollitt nor his current counsel appeared for the deposition scheduled on June 28, 2017 in Louisville, when subpoenaed to do so.¹⁴ When Pollitt did submit responses to Commission Staff's first data request, fourteen days late, some questions were not fully answered, while others were objected to without reason or specificity.¹⁵

¹⁰ *Id.*

¹¹ *Commonwealth ex rel. Beshear v. Commonwealth Office of the Governor ex rel. Bevin*, 498 S.W.3d 355 (Ky. 2016).

¹² Objection, Case No. 2017-00120, unnumbered p. 3 (Ky. P.S.C. August 7, 2017). To be clear, the Attorney General is not sure what definition of "consumer interest" pursuant to KRS chapter 367 opposing counsel is referring to.

¹³ Process Service Fee Receipt, etc., Case No. 1999-130, <http://psc.ky.gov/PSCSCF/1999%20cases/99-130/99-130.pdf>, pgs. 144-146.

¹⁴ PSC Basil C. Pollitt Subpoena, Case No. 2017-00120 (Ky. P.S.C. June 15, 2017).

¹⁵ Basil Pollitt Response to Request for Information, Case No. 2017-00129 (Ky. P.S.C. July 31, 2017).

The Attorney General's request in its Motion for Leave to Conduct Expedited Discovery is certainly warranted under the circumstances. The status of the current case, and the paucity of discovery obtained so far, is solely due to the actions, or inactions, of Pollitt.

Wherefore, the Attorney General requests the Commission disregard the assertions made in Pollitt's Objection and affirm their previous Orders.

Respectfully submitted,

ANDY BESHEAR
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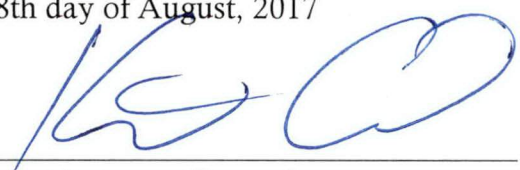
Certificate of Service and Filing

Counsel certifies that an original and ten (10) photocopies of the foregoing were served and filed by hand delivery to Mr. John S. Lyons, Acting 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:

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This 8th day of August, 2017



Assistant Attorney General