

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

This matter arises upon the motion of Defendant, Basil C. Pollitt d/b/a The Gas Group, Inc. d/b/a The Gas Group (“Basil Pollitt” or “Mr. Pollitt”), filed September 27, 2017, requesting that the Commission accept for filing his untimely post-hearing brief. Basil Pollitt tendered his post-hearing brief on September 22, 2017, two weeks after the agreed briefing deadline of September 8, 2017. By Order entered September 25, 2017, the Commission rejected the post-hearing brief as untimely filed.

The Commission takes note that Mr. Pollitt’s reasons for the untimely filing are expressly contradicted by the video transcript of the hearing.<sup>1</sup> In his motion, Mr. Pollitt acknowledges that the Commission discussed the parties’ filing of post-hearing briefs, but argues that a written briefing schedule was not issued. The August 9, 2017 hearing

<sup>1</sup> Counsel for Mr. Pollitt requested a copy of the hearing video at the conclusion of the August 9, 2017 hearing. A DVD containing a copy of the hearing video was mailed to Counsel for Mr. Pollitt on August 11, 2017.

video transcript documents that the Commission spent 17 minutes at the conclusion of the evidentiary portion of the hearing establishing dates and procedures for the parties' post-hearing filings. When given the option to file or forego a post-hearing brief, Basil Pollitt's counsel, Kirk Hoskins, stated, "I very much want to file a brief."<sup>2</sup> Mr. Hoskins twice agreed to file a post-hearing brief on September 8, 2017.<sup>3</sup> When given the option, Mr. Hoskins chose to file simultaneous post-hearing briefs on September 8, 2017, rather than have Mr. Pollitt file a brief, with a subsequent response brief filed by the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention ("Attorney General"), and Mr. Pollitt's filing of a reply brief.<sup>4</sup> The Attorney General filed his post-hearing brief on the agreed upon due date of September 8, 2017. Although Mr. Hoskins unambiguously agreed to file simultaneous post-hearing briefs on September 8, 2017, and received actual notice that the Attorney General had timely filed his brief, Mr. Hoskins never requested an extension of time to file a post-hearing brief on behalf of Mr. Pollitt.

Mr. Pollitt next argues that he had insufficient time to file a post-hearing brief by September 8, 2017, because the Commission did not clarify the issues or alleged violations to be briefed until an Order was entered on August 16, 2017. This too, is refuted by the record. Prior to agreeing to the briefing schedule, Mr. Hoskins stated he was "not clear as to all of the things that they are taking issue with,"<sup>5</sup> and requested a clarification of issues to address in the brief. The Commission agreed to file a list of the

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<sup>2</sup> August 9, 2017 Hearing, Hearing Video Transcript 6:12:20.

<sup>3</sup> *Id.* at 6:14:02, 6:14:39.

<sup>4</sup> *Id.* at 6:14:03–6:14:27.

<sup>5</sup> *Id.* at 6:12:26.

issues by August 18, 2017.<sup>6</sup> To ensure that this provided sufficient time, the Commission asked Mr. Hoskins, "If the parties had until September 8, would that be sufficient time to file a brief on the issues?"<sup>7</sup> Mr. Hoskins responded, "Yes."<sup>8</sup> As the record clearly shows, Mr. Hoskins agreed to file Mr. Pollitt's brief on September 8, 2017, with full knowledge that a clarification of the issues would be filed three weeks prior to that date.

While it is concerning that Mr. Pollitt and Mr. Hoskins display such disregard for procedural rules and disingenuously misrepresent facts in an effort to camouflage their failure to comply with an agreed briefing schedule, the Commission finds that the evidentiary record in this matter has been re-opened with the issuance of an Order on October 12, 2017, scheduling another evidentiary hearing on October 18, 2017. This additional hearing is to take testimony regarding information that will assist the Commission in rendering a decision regarding the classification of the pipeline at issue in this proceeding. The Commission further finds that, because the evidentiary record is re-opened, no prejudice will result from accepting Mr. Pollitt's untimely brief. Therefore, Mr. Pollitt's motion should be granted and he should re-submit his brief for filing within seven days of the date of this Order. The Commission will not look favorably upon further untimely filings.

IT IS THEREFORE ORDERED that:

1. Basil Pollitt's motion to file an untimely post-hearing brief is granted.

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<sup>6</sup> *Id.* at 6:12:48. The August 16, 2017 Order set forth the same allegations contained in the March 15, 2017 Order that established this show cause case, and two new issues raised by Mr. Pollitt in the course of this proceeding: 1) whether the pipeline is a distribution pipeline or a gathering line, and 2) the Commission's jurisdiction over Defendants Clark Pollitt and Amanda Pollitt.

<sup>7</sup> *Id.* at 6:13:55, 6:14:02.

<sup>8</sup> *Id.* at 6:14:02.

2. Basil Pollitt, within seven days of the date of this Order, shall file his post-hearing brief, with a corrected certificate of service.

By the Commission



ATTEST:

  
Executive Director

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