

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.

Pursuant to KRS 278.040(2)–(3), the Commission has exclusive jurisdiction over the regulation of utility rates and service, including the procedures under which it will review matters before the Commission. Intervention in Commission proceedings by persons other than the Attorney General is permissive, subject to the sound discretion of the Commission.<sup>1</sup> In reviewing motions for permissive intervention, the Commission must first determine whether the movant filed a timely motion to intervene, and, if so, then make a factual finding whether the movant meets the standard for intervention set forth in 807 KAR 5:001, Section 4(11).

Employing those regulatory standards, the Commission stated in its December 5, 2018 Order that established the procedural schedule in this matter that any person

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<sup>1</sup> KRS 367.150(8)(b); *Inter-County Rural Elec. Co-op. Corp. v. Pub. Serv. Comm'n*, 407 S.W.2d 127, 130 (Ky. 1966); *Pub. Serv. Comm'n v. Attorney Gen. of Commonwealth*, 860 S.W.2d 297, 297 n.1 (Ky. App. 1993).

requesting to intervene other than the Attorney General must state with specificity the person's special interest in a utility's rates and service that is not otherwise adequately represented, or the issues and facts the person will present that will assist the Commission in fully considering the matter. The Commission found that a recitation of the quantity of water consumed or a general statement regarding a potential impact of possible modification of rates would not be deemed sufficient to establish a special interest.

As an initial matter, the Commission finds that LFUCG and CAC filed their respective motions to intervene prior to the intervention deadline established in this matter, and therefore each filed a timely motion to intervene.

The Commission further finds that, to better assist us in reaching a factual determination whether LFUCG's and CAC's respective pending motions to intervene satisfy 807 KAR 5:001, Section 4(11), the Commission should schedule a hearing to receive testimony in support of the pending motions. Although we review motions requesting permissive intervention on a case-by-case basis, participation in past cases is instructive. We note that, in the last Kentucky-American rate case, LFUCG presented detailed expert testimony from two witnesses on an array of relevant issues pertaining to capital structure, rate of return, calculation of rate base, revenue requirement, and qualified infrastructure plan rider.<sup>2</sup> We further note that, as CAC has done in past rate cases, CAC provided testimony from its own staff consisting of generalized statements

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<sup>2</sup> Case No. 2015-00418, *Application of Kentucky-American Water Company for an Adjustment of Rates*, Testimony of Dr. J. Randall Wollridge and Andrea Crane (filed May 9, 2016).

regarding the impact of potential rate increases on low-income customers and generic information that is already in the public record.<sup>3</sup>

Based on the above, representatives of LFUCG and CAC should be prepared to offer testimony in support of their intervention, describing in specific detail each movant's special interest that is not otherwise adequately represented, or the relevant issues and facts that each movant will present that will assist the Commission in fully considering the matter. We caution movants that affordability is not a factor that the Commission can consider because KRS 278.170(1) prohibits rates that establish an unreasonable preference between classes of service for doing a like service under the same or substantially the same conditions. Further, the United States Supreme Court has held that a focus on the ability of the customer to pay for utility service is the concern of the utility and not the regulatory agency because the regulatory agency is charged with both assuring the public of reliable, efficient service at a reasonable price and assuring the utility that it may collect fair, just, and reasonable rates.<sup>4</sup>

IT IS THEREFORE ORDERED that:

1. A hearing in this matter shall be held on Wednesday, January 9, 2019, at 9 a.m., Eastern Standard Time, at the offices of the Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky, for receiving testimony from representatives of LFUCG and CAC in support of their respective pending requests for intervention.

2. Pursuant to KRS 268.360 and 807 KAR 5:001, Section 9(9), a digital video transcript shall be made of the hearing.

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<sup>3</sup> Case No. 2015-00418, Testimony of Malcom J. Ratchford (filed May 9, 2016).

<sup>4</sup> *Gainesville Util. Dept. v. Fla. Power Corp.*, 402 U.S. 515, 528 (1971).

By the Commission

ENTERED  
JAN 03 2019  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director

Case No. 2018-00358

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