

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BELLSOUTH TELECOMMUNICATIONS, INC. )

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ALLEGED FAILURE TO COMPLY WITH  
COMMISSION REGULATION

CASE NO. 96-045

O R D E R

On February 20, 1996, the Commission initiated this case to determine whether BellSouth Telecommunications, Inc. ("BellSouth") should be subject to penalties for its alleged failure to comply with Commission Regulation 807 KAR 5:061, Section 3.<sup>1</sup> The Commission took this action upon receipt of a utility-accident investigation report which alleges that on September 1, 1995, BellSouth's communications conductor, which was attached to a pole located on 760 Long Branch Road in Jeffersonville, Kentucky, was not in compliance with the minimum vertical standards of the National Electrical Safety Code (1990 edition).

On April 29, 1996, Marvin Watkins, by counsel, ("Petitioner") filed a motion with the Commission requesting limited intervention in this proceeding. In his motion, Petitioner states that he is the individual who was injured as a result of BellSouth's

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"Acceptable Standards. Unless otherwise specified by the commission, the utility shall use the applicable provisions in the following publications as standards of accepted good engineering practice for the construction and maintenance of plant and facilities, herein incorporated by reference: (1) National Electric Safety Code; 1990 Edition."

alleged failure to comply with the above-cited regulation. Petitioner further states that he has potential claims for damages as a result of the injuries he sustained from the incident.

"The . . . ultimate ground for any intervention, be it as of right, permissive or otherwise, is that it must be in the public interest. All who seek intervention successfully must meet this requirement." In Re Southern Natural Gas Company 20 PUR 3d 96,98 (1957).

Commission Regulation 807 KAR 5:001, Section 3(8), governs intervention in Commission proceedings. The regulation reposes in the Commission the responsibility for the exercise of sound discretion in the matter of affording permission to intervene. Intervention as a matter of right is not given by the regulation. Paragraph One of the regulation sets forth the initial conditions that must be satisfied by a person seeking intervention. It provides:

In any formal proceeding, any person who wishes to become a party to a proceeding before the commission may by timely motion request that he be granted leave to intervene. Such motion shall include his name and address and the name and address of any party he represents and in what capacity he is employed by such party. [Emphasis added].

If the Commission determines that the initial conditions for intervention under the regulation are met, it then considers other factors in making its discretionary decision on the issue of intervention. Initially, however, a person seeking to intervene must file a "timely" motion. The determination of timeliness is within the Commission's discretion.

The pleadings and motions in this case indicate that the essential facts are not in dispute, and that the sole remaining issues are entirely legal in nature. The hearing, which was originally scheduled for April 9, 1996, has been cancelled and an informal conference was held on April 19, 1996 at the Commission's offices located at 730 Schenkel Lane, Frankfort, Kentucky, at the request of the parties.<sup>2</sup> BellSouth and Commission Staff are now involved in negotiations, attempting to resolve this matter without resort to a hearing. This case has been ongoing since February 1996.

No substantial additional light would be cast on the remaining issues in this proceeding if the Commission granted Petitioner's motion, if Petitioner's motion indicates the type of contribution that could be expected as a result of intervention. There would always be the possibility of creating complication and confusion because of the Petitioner's potential claims for damages.

Furthermore, absent any showing by the Petitioner that (1) he has proved his claims or reduced them to judgment or (2) participation in this proceeding is his sole remedy against BellSouth, there does not appear to be any circumstance calling upon the Commission, in the exercise of its jurisdiction and in the public interest, to grant intervention to Petitioner.

The purpose of this proceeding is to ensure BellSouth's compliance with Commission regulations. Each member of the public has an equal interest in ensuring BellSouth's compliance. The fact that Petitioner may have been injured as a result of

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<sup>2</sup> On May 1, 1996, the Commission entered an Order in this proceeding dismissing Clark Rural Electric Cooperative Corporation's alleged violation of 807 KAR 5:041, Section 3. Consequently, BellSouth is now the only party to this proceeding.

BellSouth's alleged noncompliance does not enhance or enlarge his interest in this proceeding beyond that of the public at large. Petitioner is not, therefore, entitled to intervene on that ground. Furthermore, the public's interest in this proceeding is adequately represented by the Commission itself.

For the above reasons, the Commission finds, after reviewing Petitioner's motion and being otherwise sufficiently advised, that Petitioner's motion is not timely and he has not shown that granting intervention to him would be in the public interest. The Commission therefore finds that Petitioner's motion should be denied.

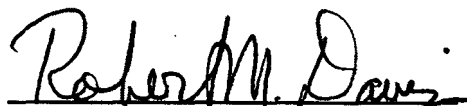
IT IS THEREFORE ORDERED that Petitioner's motion for limited intervention be and it hereby is denied.

Done at Frankfort, Kentucky, this 31st day of May, 1996.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director