

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ADJUSTMENT OF THE RATES OF KENTUCKY-     )   CASE NO. 2004-00103  
AMERICAN WATER COMPANY                     )

ORDER

Bluegrass FLOW, Inc. (“FLOW”) has moved to dismiss this proceeding or, in the alternative, to postpone the evidentiary hearing. In support of its motion, FLOW contends that the existing procedural schedule in this matter did not provide the opportunity to conduct discovery and submit testimony and therefore deprived it of its right to procedural and substantive due process. We deny the motion.

On June 14, 2004, FLOW moved for full intervention in this proceeding. On September 1, 2004, the Commission granted this motion and allowed FLOW to intervene in this matter with the same rights as all other parties. When we decided FLOW’s motion for intervention, the time for initial discovery upon Kentucky-American Water Company (“Kentucky-American”) and the filing of written testimony had already passed.<sup>1</sup> Until it filed its motion to dismiss on November 4, 2004, FLOW raised no objection or request to modify the existing procedural schedule.

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<sup>1</sup> We established this procedural schedule on July 8, 2004. On September 1, 2004, the Commission on the same day entered an Order that restated this schedule, but added the time and place of a public hearing to take public comment on the proposed rate adjustment. The earlier Order had stated the date of the public hearing, but had not stated its time or location.

FLOW impliedly argues that the Commission upon granting the motion for intervention was required to modify the existing procedural schedule to allow for FLOW to conduct discovery and submit written testimony. It submits no legal authority for this proposition.

The Commission finds no legal basis for FLOW's motion. Administrative Regulation 807 KAR 5:001, Section 3(8), requires a party to make timely intervention in this proceeding. Once granted intervention, the party acquires the same rights as the other parties, except that it is bound by the existing procedural schedule. If that party believes that modifications to the existing procedural schedule are required, the intervening party must move for such modifications. If it fails to make such motion, the Commission can only interpret the intervening party's silence as acceptance of the existing schedule and as the absence of any need for modifications. When a motion for modification is made, the Commission must balance the movant's need for modification and its efforts to fully assert its rights as an intervenor with the Commission's duty to complete its review within the prescribed statutory time.

If FLOW desired the opportunity to conduct discovery or submit written testimony, it could have requested modifications to the procedural schedule. In earlier proceedings in which it has intervened, it has made a timely motion for revisions to the procedural schedule and we readily granted its request to accommodate its needs.<sup>2</sup> In the present case, however, FLOW remained silent for over 2 months. Only on the eve of the evidentiary hearing in this matter did it seek modifications to the

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<sup>2</sup> See Case No. 2002-00317, Kentucky-American Water Company (Ky.PSC Oct. 23, 2002).

schedule. FLOW offers no reason for its delay in seeking modifications to the procedural schedule. At this late date when more than 6 months of the 10-month statutory review period has elapsed, the Commission cannot accommodate FLOW's request and ensure an adequate review of Kentucky-American's rate adjustment proposal.

Dismissal of this proceeding, moreover, would only reward FLOW for its failure to assert its rights and encourage intervenors in future proceedings to engage in last-minute delaying tactics rather than the timely assertion of their rights. Such a result would wreak havoc and prevent the orderly administration of utility rate adjustment proceedings. Dismissal would also adversely affect the other parties to this proceeding that have diligently sought to comply with the established procedural schedule. These parties have a right to a timely and final adjudication of this application.

Based upon the above discussion, we find that FLOW's Motion to Dismiss or For a New Schedule should be denied.

IT IS THEREFORE ORDERED that FLOW's Motion to Dismiss or For a New Schedule is denied.

Done at Frankfort, Kentucky, this 15<sup>th</sup> day of November, 2004.

By the Commission

ATTEST:

  
Executive Director