

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF CLARK ENERGY)
COOPERATIVE, INC. FOR ROUTINE REVISION) CASE NO. 2004-00442
OF EXISTING CATV POLE ATTACHMENTS)

ORDER

On February 24, 2005, the Commission issued an Order in this proceeding in which we approved the proposed rates for Clark Energy Cooperative, Inc. ("Clark Energy") for cable television pole ("CATV") attachments. In that Order, we failed to address the motion of Kentucky Cable Telecommunications Association ("KCTA"), filed one day earlier, for full intervention in this proceeding. Finding the motion is untimely and fails to otherwise satisfy the requirements for full intervention, we deny the motion.

On November 16, 2004, Clark Energy tendered its application for rate adjustment. At the time of this submission, Clark Energy further published notice of its proposed adjustment to all of its CATV customers by direct mail.¹ This notice, *inter alia*, contained the statement that "[a]ny corporation, association, or person with a substantial interest in the matter may, by written request within thirty (30) days after publication or mailing of the proposed rate changes, request to intervene; intervention may be granted beyond the thirty (30) day period for good cause shown." On January 19, 2005, Clark

¹ Clark Energy served notice on Adelpia Communications, the party on whose behalf KCTA seeks full intervention.

Energy's application was accepted for filing. On February 23, 2005, KCTA moved for intervention. The following day we entered our final Order in this proceeding.

Administrative Regulation 807 KAR 5:001, Section 3(8), which governs intervention in Commission proceedings, provides that “[i]n 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 [emphasis added].” KCTA had notice of the pending case for 99 days prior to the filing of its motion. Despite the language of the notice and the significant period of time that this proceeding remained on the Commission’s docket, KCTA took no action to intervene until hours before the issuance of a final Order. Given the facts of this case, we find that KCTA’s motion is untimely and should be denied.

Assuming *arguendo* that KCTA had submitted a timely motion, we find that KCTA failed to satisfy the requirements of Administrative Regulation 807 KAR 5:001, Section 3(8). KCTA is a non-profit organization consisting of more than 100 cable systems in Kentucky.² Adelphia Communications is a KCTA member and is a CATV attachment customer of Clark Energy. KCTA asserts that its requested intervention is “in lieu of the individual intervention” of Adelphia Communications.

Administrative Regulation 807 KAR 5:001, Section 3(8), which governs intervention in Commission proceedings, provides:

If the commission determines that a person has a special interest in the proceeding which is not otherwise adequately represented or that full intervention by the party is likely to

² Our search of the records of the Office of the Kentucky Secretary of State fails to indicate that KCTA is incorporated in this state or is authorized to conduct business in Kentucky.

present issues or to develop facts that will assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings, such person shall be granted full intervention.

In its motion for intervention, KCTA has not alleged any special interest in this proceeding. It is not a customer of the utility. It will not be directly affected by the proposed adjustment in rates. While one of its more than 100 members may be affected by the proposed rate adjustment, that indirect effect is insufficient to satisfy the requirements for full intervention. Moreover, if the special interest in this proceeding is that of Adelphia Communications, then Adelphia Communications is the more appropriate party to request intervention.

KCTA has also failed to demonstrate how its intervention will present issues or develop facts to assist the Commission in this proceeding. It provides no discussion of its purpose in this proceeding, its efforts to submit testimony or other evidence, or the issues that it will raise or discuss. While KCTA has previously participated in other Commission proceedings, that participation does not establish a right to intervene in all proceedings involving CATV rates.³ For each proceeding in which it seeks to intervene, KCTA, like any other prospective intervenor, must show that it meets the regulatory prerequisites for such status. In this instance, it has not done so.

IT IS THEREFORE ORDERED that KCTA's motion to intervene is denied.

³ See, e.g., Case No. 2000-00120, An Adjustment of Rates of Kentucky-American Water Company (Ky. PSC May 30, 2000).

Done at Frankfort, Kentucky, this 29th day of March, 2005.

By the Commission

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end, positioned above a horizontal line.

Executive Director

Case No. 2004-00442

