

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF CALDWELL COUNTY)
WATER DISTRICT FOR RATE ADJUSTMENT) CASE NO. 2016-00054
PURSUANT TO 807 KAR 5:076)

ATTORNEY GENERAL'S SUPPLEMENTAL MOTION TO INTERVENE

Comes now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and pursuant to KRS 367.150(8), which grants him the right and obligation to appear before regulatory bodies of the Commonwealth of Kentucky to represent consumers' interests, and hereby provides a supplemental motion in response to the Public Service Commission's ("Commission") March 29, 2016 Order.

The Kentucky Legislature grants the Attorney General the right of intervention in cases before the Commission pursuant to KRS 367.150(8).¹ This section states, in its entirety, that the Attorney General shall have the power and duty:

- (a) To appear before any federal, state or local governmental branch, commission, department, rate-making or regulatory body or agency, to represent and be heard on behalf of consumers' interests; and
- (b) To be made a real party in interest to any action on behalf of consumer interests involving a quasijudicial or rate-making proceeding of any state or local governmental branch, commission, department, agency, or rate-making body *whenever deemed necessary and advisable* in the consumers' interest by the Attorney General.²

¹ KRS 367.150.

² *Id.* (emphasis added).

It is apparent from the clear language of KRS 367.150(8) that the Legislature's intent was for the Attorney General to represent the consumers' interests before various branches of government as well as commissions. Therefore, if the Commission denies the Attorney General intervention in the present case, not only would it be contrary to legislative intent, but it would also leave the ratepayers without an advocate or a voice.

The Commission has noted on several occasions that the Attorney General's statutory right of intervention is unique from the intervention afforded to other parties pursuant to 807 KAR 5:001 Section 4(11).³ In fact, the Commission has acknowledged that, "the only person that has a statutory right to intervene is the AG, pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sound discretion of the Commission."⁴ The Commission has placed various regulatory requirements upon parties that request intervention in a case, but has admitted that the Attorney General does not have to comply with these requirements.⁵ The Commission has admitted that due to KRS 367.150(8), the Attorney General does not have to provide specific, valid reasons for his intervention in any proceeding before the Commission.⁶

However, the Commission has held in previous cases that, "[a] person *other than the Attorney General* may be granted leave to intervene in a proceeding before the Commission if that person possesses 'a special interest in the case that is not otherwise adequately represented

³ *In the Matter of: Application of South Kentucky Rural Electric Cooperative Corporation for Approval to Purchase the Fixed Assets of the Monticello Electric Plant Board, Monticello, KY, 2007-00374, Commission Order dated 13 Dec. 2007; In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates, a Certificated of Public Convenience and Necessity, Approval of Ownership of Gas Service Lines and Risers, and a Gas Line Surcharge, 2012-00222, Commission Order dated 2 Oct. 2012; In the Matter of: In the Matter of: Application of Water Service Corporation of Kentucky for an Adjustment of Rates, 2013-00237, Commission Order dated 14 Nov. 2013; In the Matter of: Application of Kentucky Utilities Company for an Adjustment of its Electric Rates, 2014-00371, Commission Order dated 13 Jan 2015.*

⁴ *In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates, a Certificated of Public Convenience and Necessity, Approval of Ownership of Gas Service Lines and Risers, and a Gas Line Surcharge, 2012-00222, Commission Order dated 2 Oct. 2012.*

⁵ *In the Matter of: Application of South Kentucky Rural Electric Cooperative Corporation for Approval to Purchase the Fixed Assets of the Monticello Electric Plant Board, Monticello, KY, 2007-00374, Commission Order dated 13 Dec. 2007.*

⁶ *Id.*

or that his or her intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.’ ”⁷ As these and other qualifiers for intervention are promulgated through regulations, they are not applicable to the Attorney General since his right to intervene before the Commission is bestowed by statute.⁸ The Attorney General can find no record of the Commission ever asserting any form of discretion as to the intervention of the Attorney General in a case, and to the contrary, has gone to great lengths to distinguish between the Attorney General’s statutory intervention right and the discretionary and permissive nature of other parties’ intervention requests.⁹

Furthermore, KRS 367.150(8) grants the Attorney General the authority to intervene in a case “*whenever deemed necessary and advisable.*”¹⁰ The Attorney General’s Office of Rate Intervention has recently experienced a change in administration coupled with a loss of personnel. These factors have forced the Office of Rate Intervention to implement a wait-and-see approach before intervening in new cases, until such time that it is confirmed the office will have the necessary resources to participate effectively. Although, the Attorney General has no intention to chronically or consistently intervene late in proceedings, he does have the statutory authority to intervene whenever he deems necessary and advisable.¹¹

⁷ 807 KAR 5:001 Section 4(11); *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of its Electric Rates*, 2014-00371, Commission Order dated 13 Jan 2015. (emphasis added)

⁸ KRS 13A.120; KRS 278.040(3).

⁹ *In the Matter of: Application of South Kentucky Rural Electric Cooperative Corporation for Approval to Purchase the Fixed Assets of the Monticello Electric Plant Board, Monticello, KY*, 2007-00374, Commission Order dated 13 Dec. 2007; *In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates, a Certificated of Public Convenience and Necessity, Approval of Ownership of Gas Service Lines and Risers, and a Gas Line Surcharge*, 2012-00222, Commission Order dated 2 Oct. 2012; *In the Matter of: Application of Water Service Corporation of Kentucky for an Adjustment of Rates*, 2013-00237, Commission Order dated 14 Nov. 2013; *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of its Electric Rates*, 2014-00371, Commission Order dated 13 Jan 2015.

¹⁰ KRS 367.150(8) (emphasis added).

¹¹ KRS 367.150(8).

Moreover, the Attorney General has intervened late in cases before the Commission in the past, and will do so in the future, if it is in the best interest of the consumers that he has been charged with representing.¹² In prior cases, there have been several times that the Attorney General has motioned to intervene well into a proceeding, even after discovery requests have been issued by the Commission and answered by applicants.¹³ Even in these cases where the applicants have objected to the late intervention, the Commission has received the Attorney General without query.¹⁴

In the present Case No. 2016-00054, it is in the beginning stages and no party to the proceeding is required to act until May 18, 2016.¹⁵ The Attorney General's intervention at this time has no effect on the procedural schedule or the applicant's rights, and thus there is no reason the Commission should continue to delay the Attorney General's intervention in this matter. Further, the Attorney General's intervention will not unduly prejudice any party since his only intention is to represent and protect the consumers' interest across this great Commonwealth. The Commission should welcome the unique representation of all ratepayers that only the Attorney General can provide in establishing rates that are fair, just, and reasonable.

Wherefore, based upon the foregoing the Attorney General respectfully requests the Commission to grant him status as an intervenor party in this action in order to represent the ratepayers' interests.

¹²*In the Matter of: Application of the Union Light, Heat and Power Company for a Certificate of Public Convenience and Necessity to Construct Gas Distribution Facilities Within its Service Territory and for a Deviation from Administrative Regulation 807 KAR 5:022, SECTION 9(17), 2002-00089, Commission Order dated 20 May 2002; In the Matter of: Application of South Kentucky Rural Electric Cooperative Corporation for Approval to Purchase the Fixed Assets of the Monticello Electric Plant Board, Monticello, KY, 2007-00374, Commission Order dated 13 Dec. 2007.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Commission Order dated 18 Feb 2016, 2016-00054.

Respectfully submitted,

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