

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY UTILITIES)	
COMPANY FOR AN ADJUSTMENT OF ITS)	
ELECTRIC RATES AND FOR)	CASE NO. 2016-00370
CERTIFICATES OF PUBLIC)	
CONVENIENCE AND NECESSITY)	

**KENTUCKY UTILITIES COMPANY’S RESPONSE TO
GREATER MUHLENBERG PARKS AND RECREATION SYSTEM’S
REQUEST TO INTERVENE**

Kentucky Utilities Company (“KU”) respectfully requests that the Commission reject or alternatively deny Greater Muhlenberg Parks and Recreation System’s (“Greater Muhlenberg”) December 6, 2016 request to intervene. The request to intervene should be rejected because it was not signed by an attorney, in violation of Commission regulations and contrary to longstanding Kentucky and Commission precedent. Alternatively, the request to intervene should be denied because it does not meet the requirements for intervention as set forth in 807 KAR 5:001, Section 4(11) for two principal reasons: (1) Greater Muhlenberg does not demonstrate a special interest in the proceeding because its interests are adequately represented by the Attorney General; and (2) Greater Muhlenberg fails to identify any relevant issues or development of relevant facts that will assist the Commission without unduly complicating and disrupting the case. The Commission should follow its own precedent and reject or alternatively deny Greater Muhlenberg’s request to intervene.

The Commission should reject Greater Muhlenberg’s request to intervene because it was not signed by an attorney as required by 807 KAR 5:001, Section 3(a); Greater Muhlenberg’s executive director cannot sign the pleading or otherwise represent Greater Muhlenberg before the Commission because he is not a licensed attorney in Kentucky. No person may engage in the

practice of law in Kentucky without first obtaining a license to practice.¹ The highest court in Kentucky has held that the practice of law includes the representation of an entity before a state administrative agency.² The Commission has similarly held that representation of an entity before the Commission constitutes the practice of law and has required that “those representing the interests of others before us [the Commission] be licensed attorneys.”³ For these reasons, the Commission has consistently rejected a variety of filings, including motions for intervention, filed by entities without an attorney.⁴ According to the online attorney database maintained by the Kentucky Bar Association, Mr. Barton is not licensed to practice law in Kentucky.⁵ Because Mr. Barton is not an attorney, longstanding Commission precedent requires that Greater Muhlenberg’s request to intervene be rejected.

In addition to the request failing because it was not signed by an attorney, Greater Muhlenberg’s request to intervene also does not meet the regulatory requirements for intervention. Only the Attorney General (“AG”) has a statutory right to intervene pursuant to KRS 367.150(8)(b), which authorizes the AG to participate “on behalf of consumer interests.” The AG petitioned for full intervenor status in this case on November 7, 2016, and the AG’s

¹ Kentucky Supreme Court Rule 3.020.

² *Kentucky State Bar Association v. Henry Vogt Machine Co.*, 416 S.W.2d 727 (Ky. 1967).

³ See *In the Matter of: The Application of Holly Creek Production Corporation to Increase its Rates and Charges for Providing Farm Tap Services Pursuant to KRS 278.485*, Case No. 2007-00007, Order (Jan. 9, 2007).

⁴ See, e.g., *In the Matter of: Alternative Rate Filing Adjustment for Delaplain Disposal Company*, Case No. 2010-00349, Order (Oct. 13, 2010) (rejecting Deer Run Estates Homeowners Association, Inc.’s motion to intervene because it was signed only by a corporate office who was not an attorney); *In the Matter of: The Applications of Big Rivers Electric Corporation, et al.*, Case No. 2007-00455, Order (Feb. 27, 2008) (rejecting the motion to intervene of the International Brotherhood of Electrical Workers, Local Union 1701 because the motion was not filed by an attorney). See also, e.g., *In the Matter of: Request of New Talk, Inc. to Cancel its Designation as an Eligible Telecommunications Carrier*, Case No. 2014-00293, Order (Sept. 3, 2014) (refusing to accept an application because it was not submitted by a Kentucky-licensed attorney); *In the Matter of: Application of Fountain Run Water District #1 for a Deviation from the Requirements of 807 KAR 5:066, Section 4(4), Regarding Water Storage*, Case No. 2003-00312, Order (Oct. 17, 2007) (rejecting application for an extension of time to comply with water storage requirements because it was not filed by an attorney); *In the Matter of: Farm Fresh Foods, Inc. v. Grayson Rural Electric Cooperative Corporation*, Case No. 10234, Order (July 19, 1988) (rejecting complaint filed with the Commission because it was not filed by an attorney).

⁵ See <http://www.kybar.org/search/custom.asp?id=2947> (last visited Dec. 7, 2016).

petition was granted by the Commission's Order dated November 16, 2016. Intervention by all others is permissive and within the sound discretion of the Commission.⁶ The Commission has granted requests for permissive intervention only upon a showing that the criteria in 807 KAR 5:001, Section 4(11) have been satisfied. Under that regulation, an intervenor must have a "special interest in the case that is not otherwise adequately represented" or the intervention must be "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

Greater Muhlenberg does not meet the first basis for permissive intervention because it does not have a special interest in the case that is not otherwise adequately represented. The Commission has held on a number of occasions that an individual customer's interest as a ratepayer is not a special interest, and that customers generally are "already adequately represented by the AG" and that the AG is "sufficiently knowledgeable about issues of rate-making and rate structure."⁸ Greater Muhlenberg's request indicates its only interest in this proceeding is as a customer concerned about its current rate assignment, which is not adequate grounds for intervention. It is certainly permissible for Greater Muhlenberg to raise its concerns in public comments, but its concerns do not support granting it the rights of an intervenor.

Next, Greater Muhlenberg does not meet the second basis for permissive intervention because it has not shown that it possesses any special knowledge or expertise that would allow it to present issues or develop facts that would assist the Commission in fully considering the

⁶ *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1966).

⁷ 807 KAR 5:001, Section 4(11)(b).

⁸ *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of Electric Base Rates*, Case No. 2008-00251, Order on Young Intervention at 5 (Dec. 5, 2008). *See, e.g., In the Matter of: Application of Kentucky-American Water Company for an Adjustment of Rates*, Case No. 2015-00418, Order (February 29, 2016); *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of its Electric Rates*, Case No. 2014-00371, Order (Jan. 6, 2015); *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of its Electric Rates*, Case No. 2012-00221, Orders of July 12, 2012 (relating to John Thompson), August 9, 2012 (relating to Michael Whipple), and August 9, 2012 (relating to Bruce Nunn).

issues in this case. Greater Muhlenberg's request provides nothing in the way of qualifications, experience, or background that gives reason to believe that it could assist the Commission in considering the facts and issues that are relevant and jurisdictional to the Commission. Indeed, Greater Muhlenberg's *pro se* intervention request, which is impermissible for the reasons stated above, demonstrates Greater Muhlenberg's lack of familiarity with Commission rules and procedures, increasing the likelihood that its participation in this proceeding as an intervenor would delay or disrupt this proceeding, however unintentionally, all without providing the Commission any special information or insight. For these reasons, KU respectfully requests the Commission deny Greater Muhlenberg's intervention request.

Certainly Greater Muhlenberg has every right to express its concerns through public comments, as does any other concerned customer; KU welcomes such comments. But granting intervention to all customers dissatisfied with their rate classification or otherwise concerned with KU's proposals in this proceeding would necessarily create undue complication, disruption, and delay. The proper means for Greater Muhlenberg to participate in this proceeding is through filing public comments, which will be entered into the record of the case and considered by the Commission. As the Commission has noted in its past orders denying intervention to individual customers seeking intervention, non-intervenors have ample opportunity to participate in proceedings by reviewing case documents, filing comments, and addressing the Commission in person.⁹ Customers can also communicate with the AG, who will represent Greater Muhlenberg's and all customers' interests in this proceeding. Therefore, denying Greater Muhlenberg's intervention request will not deny it the opportunity to be heard in this proceeding.

⁹ See *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates*, Case No. 2014-00371, Order on Hubbard Intervention at 3 (Jan. 6, 2015).

In summary, Greater Muhlenberg's request to intervene should be rejected for filing because it was not signed by an attorney licensed to practice law in Kentucky, and Greater Muhlenberg cannot participate in this proceeding unless it is represented by Kentucky counsel. But even if Greater Muhlenberg had Kentucky counsel, its request to intervene would nonetheless fail to satisfy the requirements of 807 KAR 5:001, Section 4(11) because it neither identifies a special interest in this proceeding not otherwise represented by the Attorney General nor states or shows how Greater Muhlenberg could present issues or develop facts that would assist the Commission in the resolution of this proceeding without undue complication. For these reasons, KU respectfully asks the Commission to reject or alternatively deny Greater Muhlenberg's request to intervene.

Dated: December 12, 2016

Respectfully submitted,



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Counsel for Kentucky Utilities Company

CERTIFICATE OF COMPLIANCE

This is to certify that Kentucky Utilities Company's December 12, 2016 electronic filing of the Response to Greater Muhlenberg Parks and Recreation System's Request To Intervene is a true and accurate copy of the same document being filed in paper medium; that the electronic filing has been transmitted to the Commission on December 12, 2016; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original and six copies, in paper medium, of this Response will be mailed to the Commission on December 12, 2016. This further certifies that a true and accurate copy of the foregoing was served, via U.S. Mail, on December 12, 2016, upon the following:

Tommy Barton
Executive Director
Greater Muhlenberg Parks and Recreation System
P.O. Box 169
Greenville, KY 42345

A handwritten signature in blue ink, appearing to read "Tommy Barton", is written above a horizontal line.

Counsel for Kentucky Utilities Company