

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

**ELECTRONIC APPLICATION OF)
BLUEGRASS WATER UTILITY)
OPERATING COMPANY, LLC FOR AN) Case No. 2022-00432
ADJUSTMENT OF SEWAGE RATES)**

**BLUEGRASS WATER UTILITY OPERATING COMPANY, LLC’S
RESPONSE TO SCOTT COUNTY’S MOTION TO INTERVENE**

Bluegrass Water Utility Operating Company, LLC (“Bluegrass Water” or the “Company”), by counsel, and pursuant to 807 KAR 5:001 Section 4(11), Section 5, and other applicable law, hereby responds to the request for intervention filed by Scott County, Kentucky on April 14, 2023. As explained below, the Commission should deny Scott County’s motion because Scott County has not met the Commission’s intervention standards.

1. The only person with a statutory right to intervene in this matter is the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (“Attorney General”). Kentucky law permits the Attorney General “[t]o be made a real party in interest to any action on behalf of consumer interests” in a ratemaking case “whenever deemed necessary and advisable in the consumers’ interest by the Attorney General.” KRS 367.150(8)(b).

2. The Commission granted the Attorney General’s request for intervention in this case on January 10, 2023.

3. A person seeking intervention must have an interest in the “rates and service” of a utility, as those are the only matters over which the Commission exercises jurisdiction. KRS 278.040(2). “In exercising [its] discretion to determine permissive intervention, there are both

statutory and regulatory limitations on the Commission.” *In the Matter of: Application of Nolin Rural Electric Cooperative Corporation for a General Rate Increase*, Case No. 2016-367 (Mar. 14, 2017).

4. “The statutory limitation, KRS 278.040(2), requires that the person seeking intervention have an interest in the rates or service of a utility, as those are the only two subjects under the jurisdiction of the Commission.” *Joint Application of Kenergy Corp. & Big Rivers Electric Corporation for Approval of Contracts and for a Declaratory Order*, Case No. 2013-221 (Jul. 19, 2013) (emphasis added).

5. From there, the Commission’s regulations are “clear” that intervention by parties other than the Attorney General “is permissive, not mandatory.” *Pub. Serv. Comm’n of Ky. v. Metro. Hous. Coalition*, 652 S.W.3d 648, 654 (Ky. App. 2022) (citing 807 KAR 5:001 Section 4(11) & *Inter-County Rural Elec. Co-op. Corp. v. Pub. Serv. Comm’n*, 407 S.W.2d 127, 130 (Ky. 1966)).¹

6. A person seeking permissive intervention must follow the Commission’s regulations.

7. A proposed intervenor’s motion “shall include the movant’s full name, mailing address, and electronic mail address and shall state his or her interest in the case and how intervention is likely to present issues or develop facts that will assist the commission in fully

¹ See also, *In the Matter of: Electronic Application of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility for Issuance of a Certificate of Public Convenience and Necessity to Construct a Wireless Communications Facility in the Commonwealth of Kentucky in the County of Bath*, Case No. 2021-00404, Order at 2 (Sept. 9, 2021) (“Intervention by all others is permissive and is within the sole discretion of the Commission.”); *Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts and Declaratory Order*, Case No. 2013-00221 (Jul. 19, 2013) (same).

considering the matter without unduly complicating or disrupting the proceedings.” 807 KAR 5:001 Section 4(11)(a)(1).

8. Before granting intervention, the Commission must find that the request to intervene was timely and demonstrate that the proposed intervenor “has a special interest in the case that is not otherwise adequately represented 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.” 807 KAR 5:001 Section 4(11)(b).

9. First, the Commission should deny Scott County’s request for intervention because Scott County has not shown a “special interest in the case that is not otherwise adequately represented” by the Attorney General. 807 KAR 5:001 Section 4(11)(b). “[A] general statement regarding the potential impact of possible modification of rates will not be deemed sufficient to establish a special interest.” *In the Matter of: Electronic Application of Bath County Water District for a Rate Adjustment Pursuant to 807 KAR 5:076*, Case No. 2022-00404 (Jan. 11, 2023).

10. The Attorney General is the statutory advocate for consumers in rate cases and therefore adequately represents consumer interests like those of Scott County’s citizens. Scott County has not asserted a special interest in this case that the Attorney General does not otherwise adequately represent. Its assertion that it is the county where Bluegrass Water has the most customers, Mot. ¶ 11, does not establish any interest that the Attorney General does not already adequately represent. Instead, the motion provides merely “general statement[s] regarding the potential impact of possible modification of rates” which do not describe a special interest. *See id.*

11. Second, the Commission should deny Scott County’s request for intervention because Scott County is not “likely to present issues or develop facts that assist the commission in

fully considering the matter without unduly complicating or disrupting the proceedings.” 807 KAR 5:001 Section 4(11)(b). Scott County’s request does not set forth new issues or facts that would assist the Commission in fully considering the matter.

12. The Commission has denied intervention when a proposed intervenor did not show “an interest in the rates or service” of a utility “as a retail customer[.]” *In the Matter of: Electronic Application of Duke Energy, Inc. for 1) an Adjustment of the Electric Rates; 2) Approval of New Tariffs; 3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 4) All Other Required Approvals and Relief*, Case No. 2019-271, Order (Oct. 14, 2019) (emphasis added). Scott County does not assert that it is a retail customer of Bluegrass Water, nor does it assert that it receives service from or is a customer of Bluegrass Water. Bluegrass Water can confirm that Scott County is, in fact, not a customer of Bluegrass Water. In addition, the motion does not assert that the proposed rate increase will affect any property owned by Scott County or that any part of the Scott County government is a customer of Bluegrass Water.

13. The cases Scott County relies on are distinguishable. *See* Mot. at 5 n.10. In *Water Service Kentucky*, the Commission denied a school district’s motion to intervene the same day it granted the City of Clinton’s. It found “that School District’s intervention in this matter would unduly complicate and disrupt the proceedings.” *In the Matter of Electronic Application of Water Service Corporation of Kentucky for a General Adjustment in Existing Rates*, Case No. 2020-00160, Order at 2 (Aug. 7, 2020). And, like Scott County here, “it has not specifically stated what special interest it has in the case or that is not otherwise adequately represented.” *Id.* In *Kentucky American* and *Louisville Gas and Electric*, intervenors Community Action Council and Association of Community Ministries, Inc. represented low-income customers directly affected by the proposed rate increase. *See In the Matter of Application of Kentucky-American Water*

Company for an Adjustment of Rates, Case No. 2015-00418, CAC’s Motion to Intervene (Jan. 12, 2016); *In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates, a Certificate of Public Convenience and Necessity, Approval of Ownership of Gas Service Lines and Risers, and a Gas Line Surcharge*, Case No. 2012-00222, ACM’s Motion to Intervene (Jul. 16, 2012).

14. Furthermore, the motion is not clear whether Scott County seeks to intervene on behalf of only those Scott County citizens who are Bluegrass Water customers, or if it seeks to assert the interests of all citizens of Scott County, regardless of whether they are Bluegrass Water customers. *See* Mot. ¶ 16 (“Scott County has a special interest in advocacy on behalf of its residents/customers because the proposed rates stand to impact rate affordability, health and safety, and economic development within Scott County.”). In either case, the argument would fail. If the former, those Scott County citizens may seek (as some already have) intervention on their own, assuming they meet the Commission’s intervention standards. If the latter, a county asserting an interest on behalf of citizens who are not Bluegrass Water customers is even more attenuated, and certainly far short of the “special interest” requirement. Ultimately, the Attorney General already represents the interests of Scott County’s citizens who are Bluegrass Water customers.

15. Regardless, permitting intervention by Scott County would unduly complicate and duplicate the proceedings. It would likely require Bluegrass Water to respond to additional data requests duplicative of those from both the Commission and the Attorney General. It could also lead to another set of witnesses, which would also likely be duplicative. In both cases, Scott County’s intervention would only serve to unduly complicate the proceedings by causing the Company to incur additional rate case expense in exchange for no substantive benefit.

16. Ultimately, Scott County’s motion is nothing more than a generalized statement opposing the proposed rate increase without offering new issues or facts beyond what the Attorney General may already assert on its behalf. *See, e.g., In the Matter of: Electronic 2018 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2018-348, Order (Sept. 19, 2019) (“We are not persuaded by the Sierra Club’s claim that it has a special interest that is not otherwise adequately represented.”). Its apparent goal of “advancing the interest of constituents as ratepayers or from advancing the interests of their areas impacted by a utility’s rates or service, including affordability, health and welfare, and economic development[,]” Mot. ¶ 12, is duplicative of what the Attorney General may assert in this action. That said, denying intervention does not prevent Scott County from voicing its position in this matter; it may, of course, file public comment if it chooses. Indeed, Senator Damon Thayer, who represents Scott County, has already filed a public comment in this case on April 20, 2023, asserting a position on behalf of his constituents; denying intervention would not prejudice Scott County’s rights to do the same.

17. Finally, there is simply no support for Scott County’s assertion that the Attorney General “cannot be reasonably called upon to advance” the interests of Scott County’s residents and businesses “while simultaneously seeking to advance the interests of other customer groups or service areas having dissimilar interests in the proposals.” Mot. ¶ 15. The General Assembly selected the Attorney General as the statutory advocate in rate cases. The Attorney General’s statutory role is to advocate for consumers in rate cases. KRS 367.150(8)(a) & (b). Here, as in other cases, the Attorney General is well equipped to balance the diverse interests of consumers across the Commonwealth while advocating on their behalf in this case. It routinely does so in matters before the Commission.

18. Therefore, because Scott County is unlikely to present new issues or develop facts that would assist the Commission in fully considering this matter, Scott County's participation would be duplicative and would unduly complicate and disrupt the proceedings.

WHEREFORE, Bluegrass Water respectfully asks the Commission to deny Scott County's motion to intervene.

Respectfully submitted,

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Certification

I hereby certify that a copy of this filing has been served electronically on all parties of record through the use of the Commission's electronic filing system, and there are currently no parties that the Commission has excused from participation by electronic means. Pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085, a paper copy of this filing has not been transmitted to the Commission.

I further certify that, on this the 21st day of April, 2023, a copy of this filing has been served via United States Mail, postage prepaid, upon the following:

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