

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF THE CITY OF)	
FALMOUTH TO INCREASE THE WHOLESALE)	CASE NO.
WATER RATES CHARGED TO EAST)	2024-00244
PENDLETON WATER DISTRICT AND)	
PENDLETON COUNTY WATER DISTRICT)	

ORDER

This matter arises upon two motions filed on behalf of East Pendleton Water District (East Pendleton District) and Pendleton County Water District (Pendleton District) (collectively, the Districts), filed on August 20, 2024.

The Districts' first motion, a motion to intervene, requested full intervention as provided in 807 KAR 5:001, Section 4(11)(b).¹ As a basis for the motion to intervene, the Districts stated that: the motion was timely filed; that the Districts are directly affected by the city of Falmouth's (Falmouth) proposed tariff; that the Districts have a special interest that will not be adequately represented in the Commission's proceedings unless they are granted full intervenor status; and that the Districts' participation will present issues and develop facts that will assist the Commission in its review of Falmouth's proposed tariff without unduly complicating or disrupting the Commission's proceedings.²

The Districts' second motion, a motion to amend procedural schedule and to expand the scope of the Commission's Staff's first request for information (motion to

¹ Motion to Intervene by East Pendleton Water District and Pendleton County Water District (Motion to Intervene) (filed Aug. 20, 2024).

² Motion to Intervene at 1.

amend), requested that: (1) the procedural schedule in the case be amended to include a field audit of Falmouth's books and records and issue a report on or before November 1, 2024; (2) Commission Staff prepare and file a report summarizing its findings on the reasonableness of Falmouth's proposed wholesale rates; and that Commission Staff's first request for information (Staff's First Request)³ be amended to include questions the Districts posed in an Appendix to their motion.⁴

As grounds for requesting to amend the procedural schedule, and requesting a field audit and report, the Districts stated, ". . . a Staff field audit and Staff report in the case at bar will provide the Commission with insight and understanding of Falmouth's operations and records that will not likely be attainable using only written interrogatories,"⁵ and "Staff's simultaneous filing of a report on this date will provide the Commission with information that will likely be unavailable otherwise."⁶ As grounds for requesting an expansion of the scope of Staff's First Request, the Districts stated that Staff's First Request ". . . is significantly abbreviated when compared to the Commission's First Request in Case No. 2006-00403 where 33 items were requested. To fully develop the record in this proceeding and to afford all parties of record due process, the Districts' request that the Commission expand the scope of Staff's First Request for Information to

³ Commission Staff's Second Request for Information is to be issued on Sept. 13, 2024. Commission Staff's First Request for Information was attached as Appendix B to the Order issued by the Commission on August 12, 2024.

⁴ Motion to Amend Procedural Schedule and to Expand the Scope of Commission Staff's First Request for Information (Motion to Amend) (filed Aug. 20, 2024) at 1.

⁵ Motion to Amend at 3.

⁶ Motion to Amend at 3.

Falmouth in this proceeding to include items that are crucial to the Commission’s review of Falmouth’s proposed tariff.”⁷

LEGAL STANDARD

With limited exception, the only person who has a statutory right to intervene in a Commission case is the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General), pursuant to KRS 367.150(8)(b).⁸ Intervention by others is permissive and is within the sole discretion of the Commission.⁹

The regulatory standard for permissive intervention, set forth in 807 KAR 5:001, Section 4, is twofold. Commission regulation 807 KAR 5:001, Section 4(11), requires a person to set forth in the motion to intervene either (1) a special interest in the proceeding that is not otherwise adequately represented in the case, or (2) that intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

Furthermore, pursuant to 807 KAR 5:001, Section 5(1), all requests for relief that are not required to be made in an application, petition, or written request shall be made by motion and the motion shall state precisely the relief requested.

⁷ Motion to Amend at 4.

⁸ On April 12, 2024, KRS 164.2807 was passed granting an absolute right to the Energy Planning and Inventory Commission for intervention, if so desired. KRS 164.2807(8) states “Notwithstanding any provision of law to the contrary, the executive committee, or the executive director if authorized by the executive committee, shall have standing to participate as an intervening party in any case or other proceeding before the Public Service Commission.”

⁹ *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1966).

DISCUSSION AND FINDINGS

Based on a review of the pleadings at issue and being otherwise sufficiently advised, the Commission finds that the Districts have timely filed their motion to intervene and have demonstrated that they will likely present issues or develop facts that will assist the Commission in considering this matter without unduly complicating the proceedings. According to the records currently on file with the Commission, the Districts are the only wholesale water utility customers of Falmouth,¹⁰ and because the Districts have been in a business relationship with Falmouth over a considerable period, the Districts are likely to present issues or develop facts that will assist the Commission in considering this matter without unduly complicating the proceedings. However, the Commission cautions the Districts to remember that all motions should be well founded in the facts of the investigation at hand to avoid unduly complicating the proceedings.

Conversely, the Commission finds that the Districts have not provided sufficient evidence or reasoning to grant the motion to amend. The motion to amend cites to no statute, regulation, or other sufficient grounds for the requests and provides no evidence or reasoning for the requests other than noting that these methods were utilized by the Commission in Case No. 2006-00403.

In the immediate case, the Districts' motion to amend was filed before Falmouth was given the opportunity to respond to Staff's First Request. As the case progresses, should the Commission deem it appropriate in the future to use other investigative tools at its disposal other than interrogatories, it will do so. However, until the Commission is presented with good cause, it finds it unreasonable to conduct a field audit and prepare

¹⁰ Falmouth's current tariff on file with the Commission, effective June 27, 2007.

a written report simply because it was done in a previous case. Furthermore, because the Districts are granted full intervenor status, the Districts may submit questions to Falmouth in accordance with the procedural schedule established in this proceeding. For these reasons, the Commission denies the Districts' motion to amend in its entirety.

Because elements of 807 KAR Section 4(11)(b) have been satisfied, the Commission finds that the Districts should be granted full rights of a party in this proceeding. However, because the Districts have provided no basis for the requests contained in its motion to amend, the Commission finds that this motion should be denied in its entirety. The Commission directs the Districts to the Commission's July 22, 2021 Order in Case No. 2020-00085¹¹ regarding filings with the Commission.

IT IS HEREBY ORDERED that:

1. The Districts' motion to intervene is granted.
2. The Districts' motion to amend is denied in its entirety.
3. The Districts are entitled to the full rights of a party and shall be served with the Commission's Orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by parties after the date of this Order.
4. The Districts shall comply with all provisions of the Commission's regulations, 807 KAR 5:001, Section 8, related to the service and electronic filing of documents.
5. The Districts shall adhere to the procedural schedule set forth in the Commission's August 12, 2024 Order, as amended by subsequent order.

¹¹ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001, Section 8).


6. Pursuant to 807 KAR 5:001, Section 8(9), within seven days of service of this Order, the Districts shall file a written statement with the Commission that:

a. Certifies that it, or its agent, possesses the facilities to receive electronic transmissions; and


b. Sets forth the electronic mail address to which all electronic notices and messages related to this proceeding shall be served.

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PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman


Commissioner

ENTERED
SEP 03 2024
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KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



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