

FILED
MAR 10 2017

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

IN THE MATTER OF A PERMANENT)
RULEMAKING OF THE OKLAHOMA)
CORPORATION COMMISSION)
AMENDING OAC 165:5, RULES OF)
PRACTICE)

CAUSE NO. RM 201700001

ATTORNEY GENERAL'S COMMENTS

The Attorney General of the State of Oklahoma, Mike Hunter, appearing by and through Deputy Attorney General Dara M. Derryberry and Assistant Attorney General Vilard Mullaliu, respectfully submits the following Comments in accordance with the Notice of Proposed Rulemaking filed on January 25, 2017 in the above-referenced Cause. In this Cause, the first Technical Conference was held on February 16, 2017 at the Oklahoma Corporation Commission ("Commission") to permit discussion and public comment concerning proposed amendments to Oklahoma Administrative Code ("OAC") 165:5 Rules of Practice. The Public Utility Division ("PUD") of the Commission filed revised proposed rules on February 24, 2017. The second Technical Conference was held on March 2, 2017 to allow discussion and public comment to the proposed amendments, including the revised proposed rule changes.

At the second Technical Conference, the Attorney General presented oral comments opposing the proposed rule amending OAC 165:5-9-4 to allow "any . . . statewide elected officer" to become a party of record simply by entering an appearance in a cause. The subsequently filed revised proposed rule maintains this expansive language, though it now expressly excludes Corporation Commissioners. The Attorney General reasserts the oral comments presented previously, and offers these additional comments to the rule as now proposed.

The revised proposed Commission rule that sets forth the process for becoming a party of record in a cause at the Commission states as follows:

165:4-9-4. Intervention and parties of record

- (a) Any person, not subject to subsection d of this Section, interested in the subject matter of a cause may become a party of record by filing a motion for intervention, which shall be accompanied by a notice of hearing and set for hearing on the next motion docket or as agreed to by the parties of record and the Commission or Administrative Law Judge. The Commission or an Administrative Law Judge shall prescribe terms and conditions upon which intervention shall be allowed.
- (b) An intervention shall follow the form provided elsewhere in this Chapter for an application or a response. An intervention may seek affirmative relief.
- (c) Each motion to intervene, accompanied by the notice of hearing, shall be served to all parties of record.
- (d) The following persons shall become a party of record by filing an entry of appearance or orally stating an entry of appearance at any proceeding regarding the cause:
 - (1) A person named as a respondent,
 - (2) A person entitled to individual notice in a cause,
 - (3) A person seeking to intervene with the agreement of the applicant, all parties of record, and the Commission or Administrative Law Judge, or
 - (4) The Attorney General, or any other statewide elected officer, excluding Corporation Commissioners.¹

The current rule in effect, without amendment, allows the Attorney General to become a party of record through entry of appearance. The distinction recognized in the current rule between the Attorney General and other statewide elected officers is appropriate, given that the Attorney General is the only statewide elected officer who is a *party by right* to Commission proceedings.

The Attorney General is the sole party with the statutory *duty* to “represent and protect the collective interests of all utility consumers of this state in rate-related proceedings before the

¹ OAC 165:5-9-4, Revised Proposed Rules, Cause No. RM 201700001 (filed February 24, 2017) (emphasizing revised proposed rule amendment).

Corporation Commission or in any other state or federal judicial or administrative proceeding.”² Further, under the Oklahoma Telecommunications Act of 1997, the Attorney General’s statutory duties on the public’s behalf extend to additional telecommunications matters, including fraud.³ Further, the Attorney General is granted broad statutory authority to “initiate or appear in *any action* in which the interests of the state or the people of the state are at issue.”⁴ Thus, the Attorney General’s statutory duties bestow upon him the *sole* responsibility to represent and protect the collective interests of Oklahomans in Commission proceedings, in contrast to other statewide elected officials.

Though not parties by right to Commission proceedings, other statewide elected officials nonetheless have ample opportunity to participate in such proceedings. First, “[a]ll official sessions and public hearings” at the Commission are open to the public.⁵ It is the Commission’s practice to allow public participation in its proceedings through public comments presented either in person or in writing. Second, the Commission’s current rule on entering a case provides that “[a]ny person...interested in the subject matter of a cause may become a party of record by filing a motion for intervention.”⁶ Therefore, anyone, including a statewide elected official, interested in the subject matter of a particular cause may properly file a motion to intervene in the manner prescribed by Commission rules. This intervention process provides some assurance of judicial

² 74 O.S. § 18b(A)(20).

³ 17 O.S. § 139.104(A).

⁴ 74 O.S. § 18b(A)(3) (emphasis added).

⁵ OAC 165:5-13-1(a).

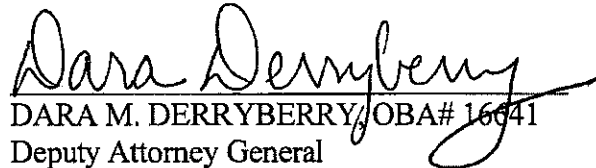
⁶ OAC 165:5-9-4(a).

and administrative efficiency, allowing “[t]he Commission or an Administrative Law Judge [to] prescribe terms and conditions upon which intervention shall be allowed.”⁷

For the foregoing reasons, the Attorney General opposes expanding the current rule that governs the process for becoming a party of record in a Commission cause set forth in OAC 165:5-9-4. The Attorney General respectfully urges the removal of the proposed language in its entirety and recommends that the Commission preserve the rule as it is currently written.

Respectfully Submitted,

MIKE HUNTER
ATTORNEY GENERAL OF OKLAHOMA


DARA M. DERRYBERRY, OBA# 16641
Deputy Attorney General


VILARD MULLALIU, OBA# 32840
Assistant Attorney General
OKLAHOMA ATTORNEY GENERAL
313 Northeast 21st Street
Oklahoma City, Oklahoma 73105
Telephone: (405) 522-5361
Facsimile: (405) 521-4518
Dara.Derryberry@oag.ok.gov
Vilard.Mullaliu@oag.ok.gov

⁷ *Id.*

Cause No. RM 201700001
Attorney General's Comments

CERTIFICATE OF SERVICE

On this 10th day of March, 2017, a true and correct copy of the above and foregoing *Attorney General's Comments*, was sent via electronic mail to the mailing list used by the Commission in Cause No. RM 201700001.


VILARD MULLALIU, OBA# 32840
Assistant Attorney General
OKLAHOMA ATTORNEY GENERAL