

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of)
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KENTUCKY HOUSEHOLD GOODS CARRIERS)
ASSOCIATION, INC.,)
Respondent.)

Docket No. 9309

**ORDER ON MOTION FOR LEAVE TO INTERVENE
BY KENTUCKY TRANSPORTATION CABINET**

I.

On February 23, 2004, Kentucky Transportation Cabinet ("KTC") filed a motion seeking an Order granting it leave to intervene as respondent in this proceeding. The deadline for Complaint Counsel to file an opposition to the motion to intervene was March 4, 2004. Complaint Counsel has not filed an opposition and thus has waived any objection. For the reasons set forth below, the motion is GRANTED in part and DENIED in part.

II.

Respondent Kentucky Household Goods Carriers Association, Inc. ("Respondent") is an Association consisting of household goods moving companies that provide intrastate and local moving services. The Complaint in this proceeding alleges that the conduct of Respondent in submitting proposed tariff rates for the transportation of household goods to the KTC constitutes unlawful price fixing in violation of Section 5 of the Federal Trade Commission Act. Respondent has asserted that its conduct is immune from antitrust liability under the state action doctrine because the KTC actively administered statutes and regulations addressing the subject of rates and tariffs and because the KTC actively supervised Respondent's collective ratemaking activities. By Order Denying Motion For Summary Decision, dated February 26, 2004, the issue of whether the challenged policy is actively supervised by the Commonwealth of Kentucky was determined to raise a genuine issue of material fact.

In support of its motion to intervene as Respondent, KTC has attached the Declaration of Maxwell C. Bailey, Secretary of Transportation of the Commonwealth of Kentucky and Chief Executive Officer of the KTC. ("Bailey Decl."). KTC states that because of the manner in which KTC involves itself in the household goods transportation process, there is an assurance that the public is paying a fair rate for a regulated service. Bailey Decl. ¶ 6. KTC asserts that if Complaint Counsel prevails in this proceeding, the public will suffer due to the multiplicity of both tariffs and rates, with no corresponding benefit to the public and a reduced ability to enforce the applicable laws and regulations. Bailey Decl. ¶ 7.

KTC, through its motion, seeks an Order granting it leave to intervene in this proceeding for the following purposes: (1) to permit KTC to offer evidence and testimony at the hearing in this proceeding; (2) to permit KTC to join in the Motion for Summary Decision submitted by Respondent; (3) to permit KTC to make, oppose, or join in other applications or motions; and (4) to grant any other relief as may be appropriate.

III.

Pursuant to Rule 3.14(a) of the Commission's Rules of Practice, the Administrative Law Judge "may by order permit the intervention to such extent and upon such terms as are provided by law or as otherwise may be deemed proper." 16 C.F.R. § 3.14(a). By law, to allow intervention, good cause must be shown. 5 U.S.C. § 45(b). Before the Commission will allow intervention into its proceedings, it must be demonstrated that the persons seeking such intervention desire to raise substantial issues of law or fact which would not otherwise be properly raised or argued; and that the issues raised are of sufficient importance to warrant additional expenditure of Commission resources on a necessarily longer and more complicated proceeding. *In re Firestone Tire & Rubber Co.*, 77 F.T.C. 1666 (1970). Administrative Law Judges shall also take into account the need to conclude these proceedings as expeditiously as possible in considering a motion to intervene. *In re Kellogg Co.*, 1979 FTC LEXIS 89, *3 (1979).

The role of KTC is important in analyzing the issues in the Complaint and the defenses asserted thereto. KTC has demonstrated that it will raise substantial issues of fact and that the issues are of sufficient importance. Further, Complaint Counsel has not opposed the motion for intervention. For these reasons, the KTC's motion to intervene is GRANTED IN PART, as described below.

IV.

The Scheduling Order entered in this case on September 4, 2003, as modified by the First Revised Scheduling Order, entered on January 8, 2004, and the Order Revising Pre-hearing

Conference Date, established the following deadlines in this proceeding, that are relevant to the instant motion:

December 1, 2003	Close of discovery
December 19, 2003	Deadline for filing motions for summary decision
December 19, 2003	Complaint Counsel provides its final proposed witness and exhibit lists
December 30, 2003	Respondent provides its final proposed witness and exhibit lists
January 6, 2004	Deadline for filing response to motion for summary decision
January 23, 2004	Deadline for filing reply in support of motion for summary decision
February 13, 2004	Deadline for filing response to reply on motion for summary decision
March 16, 2004	Final prehearing conference and commencement of hearing

KTC's motion to intervene, filed on February 23, 2004 and not ripe for adjudication until March 4, 2004, is too late for purposes of allowing KTC to join in on the motion to dismiss, the Order on which was issued on February 26, 2004. In this respect, KTC's motion to intervene is DENIED.


Because the deadlines for the close of discovery and for providing final proposed witness and exhibit lists all passed before KTC filed its motion, KTC will not be permitted to conduct discovery or to present at trial evidence that has not previously been exchanged or listed on the parties' exhibit lists. Further, except as described below, KTC will not be permitted to elicit testimony from witnesses who have not been disclosed on the parties' witness lists. In this respect, KTC's motion to intervene is DENIED.

KTC will be permitted to offer evidence and testimony at the hearing in this proceeding to the extent the exhibits or witnesses from whom it seeks to elicit testimony have previously been disclosed by the deadlines established in the Scheduling Orders. KTC may examine or cross-examine any witness called by either party to testify at trial. In addition, KTC may call as a witness Maxwell C. Bailey, the declarant in support of KTC's motion. If Mr. Bailey has not

previously been deposed in this litigation, the parties shall have until March 15, 2004 to conduct his deposition. At the trial, KTC may present an opening statement and a closing argument. In these respects, KTC's motion is GRANTED.

In addition, KTC's motion to intervene to permit it to make, oppose, or join in other applications or motions is GRANTED. KTC may also submit post-trial briefing.

ORDERED:


D. Michael Chappell
Administrative Law Judge

Date: March 10, 2004