

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE JURISDICTIONAL)	CASE NO.
STATUS OF THE IRVINGTON GAS COMPANY'S)	2013-00076
UNDERGROUND PROPANE OPERATIONS)	

ORDER

Irvington Gas Company, Inc. ("Irvington Gas") is a private liquid propane gas distribution provider that delivers propane gas to its customers in nine subdivisions in Hardin and Spencer counties through an underground two inch pipeline system and underground tanks.¹ On March 14, 2013, the Commission established this case to determine the jurisdictional status of Irvington Gas, and on April 24, 2013, Irvington Gas filed a response to the Commission's Order. On May 7, 2013, Commission Staff held an informal conference with Irvington Gas representatives,² and on September 27, 2013, Irvington Gas requested an evidentiary hearing, which was held on July 24, 2014, at the Commission's offices in Frankfort, Kentucky. There are no intervenors in this matter.

Irvington Gas is a family-owned retail propane business that has been in existence for 76 years, has 16 employees and operates primarily in Breckinridge,

¹ Irvington Gas is owned by the Kasey family that also owns and operates Valley Gas, Inc. ("Valley Gas"), a small jurisdictional Local Distribution Company ("LDC") providing natural gas service to customers in Irvington and Breckinridge County. As of December 31, 2013, Valley Gas provided service to 428 residential and 52 small commercial and industrial customers.

² The Commission's Division of Engineering Gas Pipeline Safety Branch performed its initial periodic regulatory compliance inspection on August 13, 2008. Irvington Gas was inspected again on July 22, 2011, October 31, 2012, September 4, 2013, and August 21, 2014.

Meade and Hardin counties in Kentucky.³ Irvington Gas serves a total of approximately 7,000⁴ customers, 80 percent of whom are residential⁵ and are served primarily through individual tanks.⁶ Of this total, Irvington Gas provides propane gas to around 400 metered residential customers⁷ in nine subdivisions,⁸ seven of which have more than ten customers,⁹ through separate underground pipeline systems.¹⁰ Irvington Gas provides propane gas to these 400 customers through approximately 70,000 feet of 2-inch plastic mains that are installed within the utility easements at the rear of homes¹¹ in the same manner as natural gas lines.¹² In addition, Irvington Gas installs three-quarter-inch yard lines or customer-service lines (owned by the customer) off the mains to meters located at the customers' homes.¹³ It is the jurisdictional status of Irvington

³ Direct examination of Kerry Kasey, July 24, 2014 Hearing at 10:07:10-10:09:01.

⁴ *Id.* at 11:11:31-11:13:02.

⁵ *Id.* at 10:10:10-10:11:12.

⁶ *Id.* at 11:11:31-11:13:02.

⁷ *Id.*

⁸ *Id.* at 10:09:51-10:10:21. See also Case No. 2013-00038, *Irvington Gas Company, Inc. Request for Deviation from 807 KAR 5:022, Section 13(17)(G)4* (Ky. PSC May 9, 2013), Response of Irvington Gas Company, Inc. to Commission Staff's Request for Information and Request for an Extension of Time, Item 1.

⁹ Direct examination of Kerry Kasey, July 24, 2014 Hearing at 10:16:41-10:17:02.

¹⁰ Letter from Kerry R. Kasey, President, Irvington Gas Company, Inc., to Stephanie Stumbo, Executive Director, Public Service Commission (Nov. 21, 2008). Attached to Mr. Kasey's letter was a copy of a letter from L. Kenneth Kasey, President, Irvington Gas, to Beth O'Donnell, Executive Director, Public Service Commission (Feb. 1, 2006.)

¹¹ Cross-examination of Kerry Kasey, July 24, 2014 Hearing at 11:05:16-11:06:09.

¹² Letter from Kerry R. Kasey, President, Irvington Gas Company, Inc., to Stephanie Stumbo, Executive Director, Public Service Commission (Nov. 21, 2008).

¹³ *Id.*

Gas's underground piped delivery systems to these 400 customers that is the issue currently before the Commission.

Irvington Gas purchases odorized propane gas from two suppliers,¹⁴ who transport it by truck and rail to several Irvington Gas storage facilities.¹⁵ Irvington Gas then uses its fleet of trucks to transport the propane gas to company-owned underground tanks in several locations in each of the nine subdivisions.¹⁶ Irvington Gas receives compensation for the underground propane gas service by monthly billings based on meter readings. Meters are read electronically, except for once each year when the meters are read manually.¹⁷ Irvington Gas offers its customers various payment options, including a budget plan that is reconciled in February or March of each year.¹⁸

While strongly objecting to the Commission's jurisdiction pertaining to rates and service, Irvington Gas does not object to complying with the Commission's safety requirements. After its initial inspection by the Commission's Engineering Staff in April

¹⁴ Direct examination of Kerry Kasey, July 24, 2014 Hearing at 10:14:25-10:15:00.

¹⁵ *Id.* at 10:15:12-10:15:56.

¹⁶ Letter from Kerry R. Kasey, President, Irvington Gas Company, Inc., to Stephanie Stumbo, Executive Director, Public Service Commission (Nov. 21, 2008).

¹⁷ *Id.* See also Direct examination of Kerry Kasey, July 24, 2014 Hearing at 10:13:28-10:20:02.

¹⁸ Direct examination of Kerry Kasey, July 24, 2014 Hearing at 10:18:47.

of 2008, Irvington Gas provided operator qualification training for its employees¹⁹ and continues to operate in accordance with the Commission's safety regulations.²⁰

BACKGROUND

In 2008, the Commission's Division of Engineering Gas Pipeline Safety Branch Staff ("Engineering Staff")²¹ first learned that Irvington Gas was providing propane gas to residents of several subdivisions through an underground pipeline system. As a result of this discovery, on August 13, 2008, Engineering Staff conducted its first Periodic Regulatory Compliance Inspection for compliance with federal and state safety regulations.²² Following that inspection, the Commission's Executive Director requested information from Irvington Gas regarding its propane operations,²³ and Irvington Gas responded to that request with updated information regarding its number of customers

¹⁹ Letter from Kerry R. Kasey, President, Irvington Gas Company, Inc., to Stephanie Stumbo, Executive Director, Public Service Commission (Nov. 21, 2008).

²⁰ The Commission's Pipeline Safety Branch has conducted four regulatory compliance inspections of Irvington Gas's underground propane gas facilities. These inspections were conducted on August 13, 2008; July 22, 2011; October 31, 2012; and August 25, 2014. Irvington Gas has been prompt in providing a response to these inspections, stated its willingness to comply with applicable pipeline safety regulations, and is working to address issues noted in the inspections to bring its system and operations into compliance.

²¹ The PSC is certified by the U.S. Department of Transportation and the Pipeline and Hazardous Materials Safety Administration (PHMSA) as having adopted the minimum federal regulations and established substantially the same enforcement measures as those in the federal pipeline safety statutes. Upon request and as otherwise directed by PHMSA, the Commission may perform safety-related inspection and investigation activities of non-jurisdictional facilities, including municipalities and other entities, on behalf of PHMSA.

²² The Commission's Division of Engineering Gas Pipeline Safety Branch issued its initial periodic regulatory compliance inspection report outlining corrective actions for the nine cited deficiencies on November 12, 2008, based on this inspection. On May 22, 2009, Irvington Gas submitted its response to the Gas Branch regarding this inspection report. Irvington Gas was inspected again on July 22, 2011; on October 31, 2012; and on August 25, 2014.

²³ Letter from Stephanie Stumbo, Executive Director, Kentucky Public Service Commission, to L. Kenneth Kasey, President, Irvington Gas Company, Inc. (Nov. 5, 2008).

and the general method of construction of its system.²⁴ Commission Staff met with representatives of Irvington Gas on May 13, 2009, to more fully discuss the nature of the Irvington Gas's underground propane operation.

LEGAL STANDARD

Pursuant to KRS 278.040(2), the Public Service Commission has exclusive jurisdiction over the regulation of rates and service of utilities in the state. KRS 278.010(3) states in part that:

“Utility” means any person except a regional wastewater commission established pursuant to KRS 65.8905 and, for purposes of paragraphs (a), (b), (c), (d), and (f) of this subsection, a city, who owns, controls, operates or manages any facility used or to be used for or in connection with:

...

(b) The production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power, or other uses;

(c) The transporting or conveying of gas, crude oil, or other fluid substance by pipeline to or for the public, for compensation. . . .

KRS 278.020(1) provides in part that:

No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010, except retail electric suppliers for service connections to electric-consuming facilities located within its certified territory and ordinary extensions of existing systems in the usual course

²⁴ Letter from Kerry R. Kasey, President, Irvington Gas Company, Inc. (“Irvington Gas”), to Stephanie Stumbo, Executive Director, Public Service Commission (Nov. 21, 2008).

of business, until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.

DISCUSSION

Irvington Gas states that at the request of developers and as a convenience to customers, it installed underground propane delivery systems in certain subdivisions that do not have access to natural gas service.²⁵ Irvington Gas states that there are over 100 propane companies in Kentucky²⁶ and claims that ten of these companies are its competitors.²⁷ Irvington Gas argues that if it is required to comply with all the Commission's requirements regarding rates and service, which would include filling out reports²⁸ such as for "quarterly rate adjustment" costs²⁹ and having a tariff on file with the Commission, it would incur increased costs for additional staff needed to fill out and file such reports. Irvington Gas claims it would need to pass these costs on to its customers, who would not receive any benefit, while such filings are not required of other propane suppliers with whom it competes.³⁰ In addition, Irvington Gas states that its customers can request to be removed from its underground system and switch to another propane provider by having the provider's propane tank set on their property, as

²⁵ Letter from L. Kenneth Kasey, President, Irvington Gas Company, Inc., to Beth O'Donnell, Executive Director, Public Service Commission, dated November 21, 2006 (Nov.21, 2008).

²⁶ Cross-examination of Kerry Kasey, July 24, 2014 Hearing at 10:30:55-10:31:33.

²⁷ Direct examination of Kerry Kasey, July 24, 2014 Hearing at 10:25:55-10:27:10.

²⁸ *Id.* at 10:27:10-10:27:35.

²⁹ Cross-examination of Kerry Kasey, July 24, 2014 Hearing at 10:31:33-10:32:02.

³⁰ *Id.* at 10:32:02.

there are no subdivision covenants or contractual obligations with Irvington Gas.³¹ In addition, Irvington Gas asserts that propane prices “can change overnight,”³² and that requiring it to have a tariff on file could give an unfair advantage to its competitors.³³ Irvington Gas states that it currently changes its rates to metered customers approximately five times a year,³⁴ but that unlike other utilities, which may be able to recoup losses over time, Irvington Gas cannot do so because its customers can switch to other propane providers.³⁵ Irvington Gas also states that propane gas is not typically the primary heat source for its customers, but is used for fireplaces, water heaters, grills and a few power generators.³⁶ Since 2008, Irvington Gas has doubled its number of customers receiving underground piped service from 198³⁷ to approximately 400 current customers,³⁸ and has lost only two or three customers to competing propane companies.³⁹

The operation of Irvington Gas is comparable to the operation of Bright's Propane Service, Inc. (“Bright's Propane”), which also provides piped underground

³¹ Memorandum from Virginia Gregg, Staff Attorney, Public Service Commission, to Case File No. 2013-00076 (June 14, 2013).

³² *Id.* at 10:32:48.

³³ Memorandum from Virginia Gregg, Staff Attorney, Public Service Commission, to Case File No. 2013-00076 (June 14, 2013).

³⁴ *Id.* at 12:02:14.

³⁵ Redirect-examination of Kerry Kasey, July 24, 2014 Hearing at 12:06:41.

³⁶ Letter from Kerry R. Kasey, President, Irvington Gas Company, Inc. , to Stephanie Stumbo, Executive Director, Public Service Commission (Nov. 21, 2008). *See also* Direct examination of Kerry Kasey, July 24, 2014 Hearing at 10:49:56-10:54:40.

³⁷ *Id.*

³⁸ Memorandum from Virginia Gregg, Staff Attorney, Public Service Commission, to Case File No. 2013-00076 (June 14, 2013). *See also* Direct examination of Kerry Kasey, July 24, 2014 Hearing at 11:15:10.

³⁹ Direct examination of Kerry Kasey, July 24, 2014 Hearing at 10:17:02.

propane gas service. On February 15, 1991, Bright's Propane was determined to be jurisdictional to the Commission,⁴⁰ at which time it had 22 customers.⁴¹ Bright's Propane installed an 18,000-gallon propane storage tank and approximately 7,500 feet of two-inch plastic distribution pipeline throughout the Old Bridge Subdivision in Boyle County, Kentucky.⁴² Construction of the underground pipeline was according to Western Kentucky Gas Company's standards.⁴³ Bright's Propane has a filed tariff with the Commission that contains provisions for its classification of service and its rates and charges, including a quarterly Gas Cost Adjustment ("GCA") clause that provides for quarterly applications with the Commission to adjust the cost of propane included in its rates. Bright's Propane currently serves 59 residential and one small commercial and industrial customer.⁴⁴

The Commission finds that there is nothing substantive to distinguish Irvington Gas's jurisdictional status from that of Bright's Propane. In fact, we find that Irvington Gas has a more extensive operation than Bright's Propane, with more customers and service in multiple locations. We also are not persuaded that the purpose for which Irvington Gas customers may use propane is determinative of Irvington Gas's jurisdictional status, since clearly the use of propane to fuel fireplaces, water heaters, grills and a few power generators is included in "other uses," in KRS 278.010(3)(b).

⁴⁰ Case No. 90-091, *Jurisdictional Status of Bright's Propane Company's Propane Distribution System* (Ky. PSC Feb. 15, 1991).

⁴¹ *Id.* at 1.

⁴² *Id.*

⁴³ *Id.* Western Kentucky Gas Company now operates as Atmos Energy Corporation.

⁴⁴ Annual Report of Heritage Operating L.P. dba Bright's Propane Service to the Kentucky Public Service Commission for the Year ended December 31, 2013 at 11.

The Commission recognizes and appreciates the issues raised by Irvington Gas and the concerns it has expressed regarding becoming a regulated utility. We intend to address those concerns by: (1) reducing the requirements for what is to be included in its tariff filed with the Commission; (2) foregoing the requirement for routine GCA filings; and (3) requiring a minimal amount of information in the annual report filed with the Commission. Each of these is discussed in greater detail in the following paragraphs.

Tariff and GCA Filings

The concerns Irvington Gas expressed regarding the tariff filing were twofold. First, Irvington Gas was concerned that the rate, or price, it charges its customers would become publicly available to its competitors. Its second concern was that it would be required to make GCA filings in order to change the price charged its customers. In order to address this concern, the Commission will permit Irvington Gas to file a tariff including a “not to exceed” price rather than the actual price it is charging its customers.

As long as Irvington Gas charges less than the “not to exceed” price included in its tariff, Irvington Gas may adjust its price up or down in response to changes in its wholesale propane cost, just as it does currently. Based on the information Irvington Gas provided regarding its prices in recent years, the Commission concludes that the “not to exceed” price included in its tariff shall equal 150 percent of the five-year average price for the period 2009 through 2013 discussed during direct examination of Irvington Gas’s president during the July 24, 2014 formal hearing.⁴⁵

If wholesale propane prices rise to a level that causes Irvington Gas to need to increase its retail price to a level above the “not to exceed” price set out in its tariff,

⁴⁵ Direct examination of Kerry Kasey, July 24, 2014 Hearing at 10:23:50-10:24:38.

Irvington Gas will be required to submit a GCA filing with the Commission to receive approval to charge such a price. In the event wholesale prices begin increasing in a manner that causes Irvington Gas to believe that it may need to charge a price greater than the "not to exceed" price in the relatively near future, it may submit a tariff filing for the purpose of increasing the "not to exceed" price.⁴⁶

Aside from containing a "not to exceed" price, Irvington Gas's tariff shall include its customer classifications, rules and regulations, conditions of service, customer billing options, GCA clause, etc. These will be specific to Irvington Gas; however, the format of the tariff shall be comparable to that of Valley Gas, the gas distribution system owned and operated by the same individuals who own and operate Irvington Gas. The GCA clause contained in the tariff should reflect that Irvington Gas will make GCA filings only on an as-needed basis rather than on a regular quarterly basis as is done by Valley Gas.

Annual Report

Irvington Gas will be required to file an annual report with the Commission that contains basic operating data. However, it will contain none of the financial statements or many of the schedules that are included in the standard annual report filed by small gas distribution systems subject to the Commission's jurisdiction. The report to be filed by Irvington Gas will include: (1) a title page similar to that of a standard annual report; (2) the feet of pipe/mains and number of meters on its piped underground systems at year-end; (3) the revenues, sales volumes, and year-end number of customers served via its piped underground systems for the calendar year; and (4) the number of price

⁴⁶ Such a tariff filing will need to be fully supported with documentation which demonstrates the reasonableness of Irvington Gas's proposed increase in the "not to exceed" price.

changes during the year and the range, from highest to lowest, of the prices that were charged during the year.

Other

While it is our intent to minimize the cost to Irvington Gas of being regulated as a public utility with our decisions regarding the filing of regular periodic GCA reports and the amount of information included in its annual report, certain costs are unavoidable. As a regulated public utility, Irvington Gas will be subject to the Commission's annual assessment based on the revenues from its regulated, piped underground service.

To assist in its transition to regulated utility, the Commission has determined that Irvington Gas's status as a regulated public utility subject to the Commission's jurisdiction should commence and become effective as of January 1, 2015. That will allow for the filing by Irvington Gas and review by Commission Staff of Irvington Gas's tariff prior to that date.

IT IS THEREFORE ORDERED that:

1. Irvington Gas, as a utility jurisdictional to the Public Service Commission pursuant to KRS 278.010(3), shall operate its propane storage and propane gas distribution system according to 807 KAR 5:006, 5:022, 5:023, and 5:027; federal pipeline safety regulations Title 49 Code of Federal Regulations ("CFR") Parts 191, 192, and 199; National Fire Protection Association ("NFPA") Code Nos. 58 and 59; and all other applicable laws and regulations.

2. Within 30 days of the date of this Order, Irvington Gas shall file with this Commission, using the Commission's electronic Tariff Filing System, its tariff sheets


setting out its rates, rules, and conditions of service as required herein with an effective date of January 1, 2015, and reflecting that they are filed pursuant to this Order.

3. Irvington Gas shall file annual reports with the Commission in compliance with 807 KAR 5:006, Section 4, including the information as required herein.

By the Commission

ENTERED
NOV 25 2014
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

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