

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

APPLICATION OF AUXIER ROAD GAS)
COMPANY, INC., FLOYD COUNTY,)
KENTUCKY, FOR AUTHORITY TO BORROW)
FUNDS FROM THE ECONOMIC DEVELOP-) CASE NO. 7884
MENT ADMINISTRATION THROUGH THE)
DEPARTMENT OF LOCAL GOVERNMENT)
TO RECONSTRUCT ITS SYSTEM AND TO)
RETIRE URGENT DEBTS)

AND

APPLICATION OF ESTILL BRANHAM FOR)
COMMISSION APPROVAL OF HIS ACQUIR-) CASE NO. 7993
ING OF MAJORITY INTEREST IN AUXIER)
ROAD GAS COMPANY, INC.)

O R D E R

On June 10, 1980, Auxier Road Gas Company, Inc., (Auxier) filed its duly verified application with the Public Service Commission, formerly the Energy Regulatory Commission, requesting authorization to borrow \$488,280 from the Federal Economic Development Administration through the Kentucky Department for Local Government to restore its existing gas system and for the refinancing or payment of existing debts.

On July 22, 1980, the Applicant amended its application to reflect the approval of a loan of only \$346,000 by the Department for Local Government Account Review Board. Applicant further moved the Commission to set the matter for hearing as promptly as possible. By Order dated September 2, 1980, the Commission set the matter for hearing on September 11, 1980.

Thereafter, on September 5, 1980, Applicant's counsel, Laura L. Murrell, moved the Commission for leave to withdraw as counsel. In support of said motion she stated that a dispute had arisen among the stockholders of Auxier and that she had been placed in the position of being asked to advise one shareholder in an adverse situation with other shareholders. Further investigation by the Commission determined that the dispute involved the decision by the majority stockholders of Auxier to withdraw the loan application even though the system badly needed renovation and was not in compliance with Commission regulations. The Commission decided to proceed with the hearing as scheduled, however, in order to allow all parties to voice their positions.

No party of interest other than Mr. Estill Branham, Vice-President, Manager and minority stockholder of Auxier, was present at the hearing of September 11, 1980. At this time, the Commission sustained the motion of Laura L. Murrell to withdraw as counsel and granted Mr. Branham's request on behalf of Auxier for a continuance of the case until September 24, 1980, in order to allow time to secure counsel. At September 24, 1980, Auxier was unable to go forward with the proof in the case; therefore, the Commission cancelled the hearing and by Order dated October 7, 1980, set a further hearing for October 14, 1980.

On October 10, 1980, Mr. Estill Branham filed an additional application with the Commission. In this application, Case No. 7993, Mr. Branham requested approval of his acquisition of majority interest in Auxier Road Gas Company, Inc. This case was also set for hearing on October 14, 1980, in the Commission's offices in Frankfort, Kentucky.

At the hearing, Mr. Estill Branham testified that on September 27, 1980, he was given 15.714 percent of the outstanding stock by his brother, Roscoe E. Branham. He further testified that on October 6, 1980, he purchased an additional 50 percent interest from his mother, Willa Mae Branham, for the sum of \$50,000. This purchase, which was financed by means of a personal loan, along with the acquisition of the 15.714 percent interest and his previously owned 5.714 percent interest, gave him a total of 71.428 percent of the outstanding stock and in effect now placed the operation of the Company in his hands. He testified that if the transfer of majority ownership is approved, it is his intention to proceed with the application in Case No. 7884 in order to bring the system up to Commission standards.

On February 5, 1981, Auxier filed a second amendment to its application in Case No. 7884 requesting to increase the loan from \$346,000 to \$445,563.64, the total sum needed to fully reconstruct the system as designed. In support of the request, Auxier filed a letter from the Department for Local Government Account Review Board approving the additional funds. A hearing was held on this matter on March 11, 1981, in the Commission's offices in Frankfort, Kentucky. All information has been filed and the entire matter is now considered to be fully submitted for final determination by the Commission.

As these two matters, Cases No. 7884 and 7993, are inter-related, the Commission is of the opinion and finds that they should be consolidated for the purposes of analysis, decision and order. Accordingly, these cases are hereby consolidated herein.

Summary

The Commission, after consideration of all evidence of record and being advised is of the opinion and FINDS that:

(1) Mr. Estill Branham is ready, willing and able to maintain and operate Auxier in accordance with Commission Regulations and the Department of Transportation Code of Federal Regulations for the Transportation of Natural and Other Gas by Pipeline; therefore, the proposed transfer of majority ownership is in the best interest of the consumers and should be approved.

(2) The proposed construction and renovation of the system will enable Auxier to provide adequate and safe gas service to its customers. It is therefore in the public interest and should be approved.

(3) Any construction deviations from the proposed plans and specifications, which could adversely affect service to any customer or safety to the public, should be subject to the prior approval of this Commission.

(4) The design, fabrication, installation, testing, operation and maintenance of all gas piping shall be done under the supervision of one whose credentials are known and are acceptable to the Public Service Commission.

(5) Installation and replacement of gas piping shall be performed only by a qualified installer or fitter, who is experienced in such work, familiar with all precautions required, and has complied with all requirements of applicable regulations.

(6) Within sixty (60) days of the date of substantial completion of the construction authorized herein, the Applicant

should require the Engineer to furnish this Commission with a copy of the "As-Built Plans" and a certification that the construction has been satisfactorily completed in accordance with the plans and specifications.

(7) The Applicant's present financial condition is such that it will be unable to continue operating without the proposed loan, as it is currently unable to either pay its indebtedness or obtain further credit.

(8) The proposed borrowing by the Applicant of \$445,563.64 from the Federal Economic Development Administration through the Kentucky Department for Local Government is for a lawful object within the corporate purposes of the utility, is necessary and appropriate for and consistent with the proper performance by the utility of its service to the public and will not impair its ability to perform that service and is reasonably necessary and appropriate for such purpose.

The Commission therefore ORDERS that:

(1) The transfer of majority ownership to Mr. Estill Branham by his acquisition of stock is hereby approved.

(2) Auxier Road Gas Company, Inc., be and it is hereby granted a certificate of convenience and necessity to reconstruct and renovate its gas system.

(3) The proposed construction shall be performed in accordance with the applicable Federal and State Regulations.

(4) Any construction deviations from the proposed plans and specifications, which could adversely affect service to any customer or safety to the public, shall be subject to the prior approval of this Commission.

(5) Auxier Road Gas Company, Inc., be and it hereby is authorized to borrow from the Federal Economic Development Administration through the Kentucky Department for Local Government the sum of \$445,563.64 at an interest rate of 5.125% per annum.

(6) The funds authorized herein shall be used only for the purposes of renovating and reconstructing its system and paying the indebtedness set out in the record.

(7) The Applicant shall submit monthly reports to the Commission setting forth in detail the status of the proposed renovation and reconstruction as well as the status of the funds authorized for said construction.

(8) The Applicant shall submit quarterly financial statements to the Commission until such time as the Commission is assured as to the financial stability of the Applicant.

(9) The Company shall require the Engineer to furnish this Commission, within sixty (60) days of the date of substantial completion, a copy of the "As-Built Plans" and a certification that the construction has been satisfactorily completed in accordance with the plans and specifications.

Nothing contained herein shall be deemed a finding of value or a warranty on the part of the Commonwealth of Kentucky or any agency thereof as to the borrowings authorized herein.

Done at Frankfort, Kentucky, this 14th day of April, 1981.

PUBLIC SERVICE COMMISSION

Marlin M. Votz
Chairman

Did not participate
Vice Chairman

W. H. Clavin
Commissioner

ATTEST:

Secretary