

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

A JOINT APPLICATION OF DANNY )  
PRESTON AND BETTY PRESTON, DAVIS )  
BRANCH ROAD, VAN LEAR, KENTUCKY )  
41265 AND JUPITER GAS COMPANY, )  
INC., A KENTUCKY CORPORATION WITH )  
ITS PRINCIPAL PLACE OF BUSINESS )  
AT 865 SPARTA COURT, LEXINGTON, )  
KENTUCKY 40504 FOR THE SALE AND )  
PURCHASE OF ALL ISSUED AND OUT- )  
STANDING SHARES OF JOHNSON COUNTY )  
GAS COMPANY, INC., A KENTUCKY )  
CORPORATION WITH ITS PRINCIPAL )  
PLACE OF BUSINESS LOCATED IN )  
VAN LEAR, JOHNSON COUNTY, )  
KENTUCKY 41265 )

CASE NO. 8966

O R D E R

On January 13, 1984, Johnson County Gas Company, Inc., ("Johnson County") and Jupiter Gas Company, Inc., ("Jupiter") filed a joint application for approval of the sale and transfer of the assets of Johnson County to Jupiter. The Commission must approve the sale of an existing utility system to a prospective purchaser in order to insure that the new owner is "ready, willing and able" to carry on the operations of the system in such a way as to insure that the utility's customers will continue to receive adequate service at fair rates.<sup>1</sup> As joint

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<sup>1</sup>Public Service Commission v. Cities of Southgate, Ky., 268 S.W.2d 19, 21 (1954).

applicants in this case, Johnson County and Jupiter have the burden of proving that the prospective purchaser of the utility (Jupiter) is "ready, willing and able" to continue providing adequate service to the customers.

In order to determine whether Jupiter is in fact ready and able to assume the operations of Johnson County, the Commission must investigate the financial condition of Jupiter as well as the method by which the proposed sale will be financed. The Commission must also be satisfied that Jupiter possesses the necessary technical and managerial skills to operate the utility consistent with PSC regulations and orders. Finally, the Commission was very concerned about how Jupiter proposed to pay off the very large indebtedness of Johnson County and still operate the system within the established rates for the utility, which are already among the highest in the state.<sup>2</sup>

The Commission began its inquiry into these areas by requesting both Johnson County and Jupiter to supply certain specified information and documents. The responses to these requests for information were, for the most part, inadequate and the Commission was consequently forced to delay the scheduling of the evidentiary hearing in this matter.

The first hearing was held before the Commission on May 24, 1984. Since Johnson County has repeatedly been in jeopardy of

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<sup>2</sup>Johnson County currently owes the Department for Local Government \$1.3 million for the cost of rebuilding the gas system in 1981 and Columbia Gas of Kentucky \$380,000 in back bills for wholesale gas purchases.

having its wholesale gas supply terminated for failure to pay its bills, there has been a high level of interest in this case by the consumers served by Johnson County. Accordingly, Mr. Hubert Daniels intervened in the case on behalf of a group of residential customers of Johnson County, as did the Attorney General of Kentucky through its Consumer Protection Division. The two previous gas suppliers of Johnson County, Columbia Gas of Kentucky and Kentucky-West Virginia Gas Company, both intervened and participated in the case. Johnson County's largest creditor, the Department for Local Government, was also an intervenor throughout this proceeding.

At the May 24 hearing, Jupiter was represented by its president, Mr. Robert L. Gregory. However, despite subpoenas served on the company's attorney, none of the present officers of Johnson County (Danny and Betty Preston) appeared at the hearing.

Jupiter was first questioned about the terms of its purchase of the stock of Johnson County. Jupiter testified that the purchase price was \$150,000 which was financed through a loan from the Citizens Fidelity Bank of Louisville. This loan was secured by the personal assets of the owners of Jupiter. (T.E. I, 225.)<sup>3</sup> Jupiter was then asked to provide documentation of its loan with Citizens Fidelity Bank. (T.E. I, 226.) This was never submitted by Jupiter. A copy of any loan agreements between

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<sup>3</sup>"T.E. I" refers to the official transcript of the Commission's hearing in this matter held May 24, 1984.

Jupiter and Johnson County was also requested. (T.E. I, 84-85.) This information was also never submitted.

Jupiter's technical and managerial ability to operate the system in compliance with PSC rules and regulations was carefully examined during the hearing. Jupiter testified that its operational employee was very competent and agreed to furnish the Commission a copy of his Kentucky Gas Association certification. (T.E. I, 48-49.) However, this information was never supplied. When questioned about its willingness to comply with a PSC Order issued in December, 1983, requiring payment into an escrow account, Jupiter replied that it had only very recently seen the Order and was not familiar with it, and that mail sent to Jupiter's Chairman of the Board at the correct address is sometimes "lost." (T.E. I, 87, 117.) However, Jupiter promised to fully establish the escrow account by June 1, 1984. (T.E. I, 113.) This was never done.

When questioned by the Chairman of the Commission, Jupiter stated that it was unaware at the time it purchased Johnson County that the company's existing liabilities exceeded the net depreciated value of plant. The president of Jupiter also stated that he was unaware that no return for ratemaking purposes would be allowed on the difference between the price paid for the utility and its book value. (T.E. I, 300-301.)

Since the testimony given at the hearing raised a serious issue as to Jupiter's ability to operate the company on a sound financial basis, much additional financial information was requested of Jupiter. Jupiter, accordingly, agreed to supply

current balance sheets for both Jupiter and Johnson County, a copy of Jupiter's current "operating budget," an income statement for Johnson County since January 10, 1984, and copies of the journal entries recording the purchase of Johnson County by Jupiter. (T.E. I, 201, 282, 287-288.) None of this information was ever supplied to the Commission.

Finally, the Commission and the parties focused on a critical issue in this case: Jupiter's proposal for liquidating the indebtedness to Columbia Gas of Kentucky and the Department for Local Government ("DLG"). Jupiter first testified that it was not even aware of Johnson County's indebtedness to Kentucky-West Virginia Gas Company when it agreed to buy Johnson County. (T.E. I, 41.) As to the DLG and Columbia Gas debt, Jupiter admitted that it had reached no agreement with either of these companies as to how the past due balance would be paid, nor had Jupiter made any payments to either creditor since January 10, 1984. (T.E. I, 118, 190.) When it was pointed out that Columbia Gas Transmission Corporation ("CGT") will no longer transport gas for Johnson County after July 9, 1984, Jupiter assured the Commission that it had an "oral agreement" with CGT to continue the transportation service after July 9. However, at the subsequent hearing in this matter, CGT's counsel appeared and stated that

CGT had no intent of renewing the transportation agreement with Johnson County after July 8, 1984. (T.E. II, 14.)<sup>4</sup>

So many questions were left unanswered by the testimony of Jupiter's president that it was incumbent upon the Commission to schedule a second hearing in this matter at which time much-needed additional evidence could be received from Jupiter's chairman, Mr. Jack Daniel, its accountant and its operating consultant. Jupiter assured the Commission that these persons would be present at the next hearing.

The second hearing was held before the Commission on June 13, 1984, at 10:00 A.M. No representative of Jupiter appeared at the hearing even though subpoenas had been issued for both Jupiter's president and chairman of the board. Instead, at 10:10 A.M. on the day of the hearing, Jupiter sought a temporary injunction in the Franklin Circuit Court prohibiting the PSC from taking any further action in this matter which was not served on the Commission until after the hearing. At 3:50 P.M. on the same day, the circuit court dissolved the temporary injunction upon joint motion of the Commission and the other intervening parties in this matter. No representative of Johnson County appeared at the hearing despite subpoenas having been issued for its officers. Since the Commission could proceed no further without the presence of the applicants in the case, the hearing was adjourned and this case was taken under submission.

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<sup>4</sup>"T.E. II" refers to the official transcript of the second PSC hearing in this matter held on June 13, 1984.

Upon consideration of the evidence of record as set forth above, the Commission hereby finds as follows:

1. Jupiter and Johnson County have completely failed to meet their burden of proof in this case. Johnson County's input and participation in this case was non-existent. Its co-applicant, Jupiter, promised much but delivered little. Without the information requested at the May 24 hearing, the Commission cannot determine (a) whether Jupiter has the financial and managerial capability of operating Johnson County in compliance with PSC policies and regulations, or (b) whether Jupiter can or will pay off the large indebtedness to DLG and Columbia Gas of Kentucky. Without information on these two critical issues, the Commission is not in a position to make an informed decision as to whether Jupiter is ready, willing and able to operate Johnson County. Accordingly, the proposed transfer must be denied.

2. The lawful operators of Johnson County Gas Company are its previous owners, Danny and Betty Preston. As president and secretary of the company respectively, Danny and Betty Preston are responsible to this Commission for all actions by Johnson County since January 10, 1984, to the present.


Based upon the above-stated findings and being advised, the Commission HEREBY ORDERS that the joint application of Johnson County Gas Company and Jupiter Gas Company for approval of the transfer of the stock of Johnson County be and it hereby is denied.


It is FURTHER ORDERED that Danny and Betty Preston are the lawful operators of the Johnson County Gas Company and they are,


accordingly, responsible to this Commission for all actions of Johnson County Gas Company since January 10, 1984, to the present.

Done at Frankfort, Kentucky, this 19th day of June, 1984.

PUBLIC SERVICE COMMISSION

  
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Chairman

  
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Vice Chairman

  
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Commissioner

ATTEST:

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Secretary