

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

RESIDENTS OF TOLER CREEK,	)	
PIKE COUNTY, KENTUCKY	)	
COMPLAINANT	)	
	)	
VS.	)	CASE NO. 9324
	)	
CITIES SERVICE GAS CORP.	)	
DEFENDANT	)	

O R D E R

On March 29, 1985, a formal complaint was filed with the Commission by Mr. David Rubinstein, representing residents of Toler Creek, Pike County, Kentucky, ("Toler Creek") against the Cities Service Gas Company ("Cities"). The reason for the complaint is the notice of termination of gas supply Cities sent to the residents of Toler Creek on or about February 1, 1985, who had been supplied gas by Cities from the Law Heirs "A" No. 24 well ("Well").

Toler Creek's position is that since Cities has distribution lines and meters in place, many of which have been recently installed or renovated at each customer's own expense, Cities is discriminating unfairly against Toler Creek by seeking to discontinue their service, pursuant to KRS 278.170. While the customers were installing and renovating lines during the past 2 or 3 years, they were at no time advised by Cities that their gas supply was in jeopardy. Toler Creek further submits that the Commission can order such service to be continued pursuant to KRS 278.505, and that such an order by the Commission can be done

without detriment to customers of other utilities under jurisdiction of the Commission. Toler Creek also states that KRS 278.485, the so-called "farm tap law," does not apply in this case since these customers were serviced by individual contracts and were not served pursuant to the provisions of KRS 278.485.

Cities states that it has been providing gas to Toler Creek from Law Heirs "A" No. 24 well for over 30 years, but there is no longer sufficient gas in the Well to adequately supply Toler Creek during periods of peak usage. In fact, Cities has been backfeeding the Well for approximately 2 years. Cities states that it cannot continue to backfeed the Well since Cities believes that such action would violate the abandonment authority it received from FERC in 1980 to use this gas, which was dedicated to the interstate gas system, for local use in Kentucky. Cities also states that backfeeding a well causes technical problems and is not an acceptable method within the gas industry of providing gas to customers. Finally, in the termination of supply notices, Cities has offered to reimburse Toler Creek customers up to \$700 each for conversion to an alternate fuel.

Prior to receipt of the formal complaint the Commission became more aware of this matter due to conversations between Commission staff and Toler Creek, and subsequently Cities. On March 28, 1985, a Toler Creek resident advised the Commission of the notice sent by Cities. Later that same day the Commission contacted Cities and requested that all plans to terminate the supply of gas to Toler Creek be halted until the Commission could

study the jurisdictional question. The Commission also advised Cities that a hearing might be necessary in order for the Commission to determine the applicability of Kentucky laws and regulations. Cities agreed to halt any plans to terminate service on April 1, 1985.

#### COMMENTARY

On April 1, 1985, the Commission received from the Federal Energy Regulatory Commission ("FERC") its answer to the Commission's question regarding jurisdiction in this matter. The interpretation in part said "the transportation and sale of gas by Cities for domestic consumption in Kentucky is not within the jurisdiction of this agency [FERC]. . .it is a matter of local concern that would be more appropriately addressed by the Kentucky Public Service Commission." On April 18, 1985, the Commission issued an Order directing Cities to file an Application for Abandonment and a hearing was scheduled.

On May 17, 1985, a hearing was conducted to discuss Cities' termination of supply to Toler Creek from the Well. According to testimony the Well was drilled in 1933 and has played out. There are two other wells within one-half mile which have also played out. Cities testified that even if all three of these wells were hooked together, the supply would be inadequate to supply the peak needs of Toler Creek.

According to Toler Creek, residents are paying 35 cents to \$2.63 per Mcf of gas from the Well depending upon whether they were a customer when the original well and line were laid, or whether they were hooked up during a more recent period.

Columbia Gas Transmission ("TCO") has a transmission line in this area and purchases gas from Cities' other wells in the Toler Creek area. According to testimony Cities receives \$3.23 per Mcf of gas purchased by TCO. Toler Creek also stated that during the 1977-78 period Cities agreed to allow the so-called "illegal taps" to receive gas from the Well as long as these customers agreed to bring their hook-ups into compliance with 807 KAR 5:022 (gas safety regulations). Cities made this offer again in 1980. In the case of service connections, or taps, on gathering or transmission lines, Federal and State regulations prohibit more than one tap per meter (such as a "branch tee"), unless such arrangements are requested by the prospective customers, approved by the pipeline company, and connected in compliance with 807 KAR 5:022. According to the record in this case, 12 of the customers receiving gas from the Well are branch tees hooked up to approved service connections by Cities, but the branch tees were not approved by Cities, and only one is in compliance with 807 KAR 5:022. Therefore, these specific branch tees, or taps, are illegal.

On June 26, 1985, a public meeting was conducted by the Commission in Harold, Kentucky, at the request of Representative Greg Stumbo. The purpose of the meeting was to clarify the issues in this case, and to provide an additional forum through which Cities and Toler Creek could achieve a mutually acceptable resolution to the proposed abandonment of the Well. At the meeting, though, no common ground was identified on which Cities and Toler Creek could achieve their goals. However, Cities

reiterated its offer to provide \$700 to each customer whose service is terminated from the abandonment, towards conversion to an alternate fuel.

Subsequent to the public meeting, Toler Creek requested that Cities backfeed or otherwise supply Toler Creek from wells that were farther away than one-half mile. On July 22, 1985, Cities responded to say that such action violates the abandonment authority received from FERC which authorized domestic supply in the first place. In addition, technical problems prevent the use of backfeeding for supplying residential customers.

Since TCO has a transmission line in this general area, the P-36 line, the Commission requested on July 25, 1985, that Columbia Gas of Kentucky ("Columbia") investigate the feasibility of supplying gas to Toler Creek. On August 2, 1985, Columbia representatives met with Toler Creek. After visiting Toler Creek and reviewing system maps Columbia advised the Commission on August 7, 1985, that through mutual agreement between Columbia and Toler Creek "it would not be economically feasible for either the residents or Columbia to have us serve them." This decision was reached in part on the basis that the P-36 line is approximately five miles away from Toler Creek.

The Commission is not convinced that the proposed action by Cities violates KRS 278.170, Discrimination as to rates or service. The Commission notes the testimony of Cities which describes the Well as played out, and the Commission can find no

reason to dispute this analysis. The individual contracts negotiated by Toler Creek only relate to the Well, and not to supply from other wells.

As to Toler Creek's position that the Commission can order Cities to transport gas to Toler Creek pursuant to KRS 278.505, the record in this case is absent of any evidence that Toler Creek has a supply of gas capable of meeting its peak day usage that Cities has refused to transport. KRS 278.505 relates to the Commission's authority to require an intrastate pipeline to transport gas for any person. Should Toler Creek secure an adequate supply of gas and request that Cities transport that gas, KRS 278.505 would become applicable. Otherwise, this statute is not an issue in this case.

The Commission does not understand the distinction Toler Creek draws regarding the initial signing of individual contracts after the Well was initially drilled and KRS 278.485, the "farm tap law." This statute does not concern itself with the manner in which a service agreement is finalized, only that service is provided according to the provisions of the law. The Commission understands that the original contracts were signed by individuals before the enactment of KRS 278.485. However, the purpose of KRS 278.485 is to require pipeline companies and gathering lines to provide service to certain customers under certain conditions, and to that extent is concerned with the rates charged and the operational safety standards adhered to by the parties involved.

Based on the record of this hearing, Toler Creek would appear to have been receiving gas under the conditions envisioned by KRS 278.485.

The Commission has considered various alternatives to continue the supply of natural gas to Toler Creek, but none appear to be feasible. It is also evident that Cities has the statutory authority to abandon service to customers who are supplied natural gas pursuant to KRS 278.485(6). The Commission regrets that the only resolution to this situation appears to be that the Well should be abandoned, which requires Toler Creek to either secure its natural gas supply elsewhere or convert to an alternate fuel. Since other supplies of natural gas do not appear to be accessible, the Commission believes that the \$700 amount offered by Cities, which is not required by law, will assist Toler Creek in converting to an alternate fuel by easing the financial burden of the conversion.

#### CONCLUSION

After reviewing the record, the Commission is of the opinion and finds that:

1. Toler Creek residents have been receiving natural gas from Cities from the Law Heirs "A" No. 24 Well, which was drilled in 1933, and the contracts signed for this service apply only to this one well.
2. The Well which has provided supplies to Toler Creek and others since 1933 no longer has sufficient gas reserves to supply the peak needs of the customers, two other wells within

one-half mile of the Well have also played out, and during the past 2 years Cities has been backfeeding the Well from other Cities' wells.

3. Cities cannot continue to backfeed the Well due to technical problems, and backfeeding is not an acceptable method within the gas industry of providing gas to customers.

4. Pursuant to KRS 278.485 Toler Creek is receiving gas under the conditions as provided in the law and described in the record of this case, and is subject to its provisions.

5. The issue of abandonment is jurisdictional to this Commission pursuant to KRS 278.485(6) and to 807 KAR Chapter 5 which includes provisions by which utilities must provide service and reasons for which service may be terminated.

6. The FERC has interpreted that this situation is not jurisdictional and is a local matter to be resolved by this Commission.

7. Cities has not discriminated against Toler Creek as defined in KRS 278.170, and based on the evidence has supplied some gas to Toler Creek from wells other than Law Heirs "A" No. 24.

8. This Commission cannot order Cities to transport gas to Toler Creek pursuant to KRS 278.505 since the record in this case does not indicate that Toler Creek has arranged for a supply of gas that Cities refuses to transport.

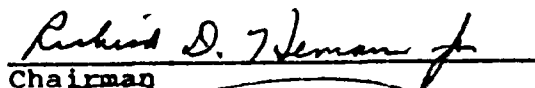
IT IS THEREFORE ORDERED that Cities may proceed with the termination of service to Toler Creek since the terms of the contracts between Cities and Toler Creek have been fulfilled.



IT IS FURTHER ORDERED that Cities may continue its offer of providing \$700 to each Toler Creek resident whose service is terminated pursuant to this Order, towards conversion to an alternate fuel.

Done at Frankfort, Kentucky, this 11th day of October, 1985.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

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Secretary