

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

WESTERN KENTUCKY GAS CO.,	)	
A DIVISION OF TEXAS AMERICAN	)	
ENERGY,	)	
COMPLAINANT	)	CASE NO. 9278
VS.	)	
ORBIT GAS COMPANY, INC.,	)	
DEFENDANT	)	

O R D E R

On March 1, 1985, the Commission instituted the above-styled case to investigate a complaint by Western Kentucky Gas ("Western") regarding the proposed sale of interstate gas by Orbit Gas Company ("Orbit") to Alcan, Inc. Included in this complaint is a request by Western that the Commission issue a Cease and Desist Order preventing Orbit from serving Alcan, Inc.

The principal issue in this complaint is the nature and extent of the Commission's jurisdiction concerning the sale of natural gas by Orbit. Orbit contends that all of its customers are served on a contractual basis, service is not extended to the general public, and all but one customer is either part-owner of Orbit or a right-of-way customer. Western contends that the sale of natural gas between Orbit and Alcan is a jurisdictional activity that has not been approved by the Commission. Western further contends that if the Commission does not rule in favor of Western in this case, nothing can prevent Orbit or any other

non-regulated company from selling gas to Western's other industrial customers, which will adversely affect Western's residential ratepayers.

The evidentiary record in this case, 9278, consists of testimony taken at the hearing before the Commission on June 4, 1985, responses to written questions submitted to the parties by the Commission, and the evidentiary record of Case 9046,<sup>1</sup> incorporated by reference.

The question of the jurisdictional status of Orbit as a gas utility has come before the Commission previously. In 1970 a 65-mile, 12" transmission pipeline was constructed by National Steel for National Pipeline to serve its three plants in Hawesville, Kentucky. This pipeline was operated by Orbit (originally doing business as National Chemical) until 1977. While Western objected to the construction of this pipeline, the Commission in 1970 refused to assert jurisdiction due to the limited supply of gas being transported by Orbit to a single group of customers. The Commission also noted that the only customers of Orbit, other than via easement contracts, were shareholders of Orbit.

In 1973 Orbit began supplying gas to the Borg Warner plant since Western was unable to acquire any new industrial customers under its gas curtailment program. The Commission in 1973 declined to assert jurisdiction over this activity due to the gas curtailment restrictions imposed upon Western at the time.

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<sup>1</sup> Western Kentucky Gas Company, A Division of Texas American Energy, Complainant vs. Orbit Gas Company, Inc., Defendant

Since 1970 Orbit has supplied through sales or transportation service all or part of the natural gas needs to: approximately 100 "farm tap" customers through easement contracts, of whom 30 are on Orbit's own gathering lines and the remainder on National Pipeline's (now Western's) 65-mile transmission pipeline; the Ensign Bickford plant; the National Southwire and Southwire plants in Hawesville; Borg Warner's York plant; and the Alcan plant. Through 1984 the gas supplied by Orbit to its customers was mostly, if not all, locally-produced gas.

During 1984, Orbit contracted with American Natural Resources ("ANR") to purchase supplies of natural gas and transport that gas to Orbit's Kentucky facilities. In order to receive the gas Orbit constructed a 700-foot, 4" connector line between the 30" ANR interstate transmission line and a 6" Alcan line (which had been constructed by Alcan several years earlier). In July, 1984, Orbit executed a contract with Alcan to supply up to 1500 Dths of gas per day to Alcan through October 31, 1985. These sales commenced on January 31, 1985.

#### COMMENTARY

KRS 278.010(3) defines a utility in part as "any person . . . who owns, controls or operates or manages any facilities used or to be used for in connection with . . . the distribution, sale or furnishing of natural gas . . . to or for the public, for compensation . . .; (or) the transporting or conveying of gas . . . for compensation."

Based on information provided in this case Orbit sold 1,031,055 Mcfs of natural gas for \$4,528,924 during the period

April 1, 1983, through April, 1984. From January 1, 1985, through April 1, 1985, 261,434 Mcfs were sold by Orbit to three customers: National Southwire, Southwire and Alcan. During the period January 1, 1985, through May 31, 1985, Orbit purchased and received approximately 151,363 Dths through its interconnection line with ANR.

Effective September 1, 1985, Orbit no longer supplies National Southwire, Southwire or the Borg Warner plants with their natural gas needs since Western has purchased National Pipeline's 65-mile transmission pipeline. At present Orbit has three customers: the Alcan and Ensign Bickford plants, and Western. In addition, 30 "farm tap" customers are served from Orbit's gathering lines.

While it is evident that Orbit has been selling and transporting gas at least since 1970 for compensation, the Commission is unconvinced that this activity has caused any significant harm to Western. In fact, the Commission notes that the sale and/or transportation of gas to Alcan has been shared by Western and Orbit for several years, and the existence of Orbit in at least one case has enabled locally-produced gas to serve a Kentucky industry which had no other access to gas (Borg Warner).

The Commission recognizes the importance industrial customers represent to a utility which serves primarily residential customers. However, the Federal Energy Regulatory Commission ("FERC") Final Rule (Order No. 436) and other changes occurring in the natural gas industry reflect a movement toward the transportation of customer-owned gas. Western and many

jurisdictional gas distribution companies will be affected by the developing competitive environment. These matters will be considered by the Commission in Administrative Case No. 297 (In the Matter of Investigation of Kentucky Regulation in Light of FERC Rulemaking (Docket No. RM85-1) - Natural Gas).

Finally, the Commission has reviewed the history of Orbit and notes that in 1970 the Commission ruled that Orbit's sales were not jurisdictional since they were of a limited nature, primarily to its shareholders. Again, in 1973 when Orbit began supplying the Borg Warner plant with locally-produced gas, the Commission ruled that this represented no jurisdictional activity, given the unique situation that gas curtailment represented at the time and Western's subsequent inability to supply a willing customer. In each case the basis for denying jurisdiction was predicated on a unique situation: in 1970, supply to shareholders, and in 1973, supply during a period of gas curtailment to Western.

#### CONCLUSION

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

1. At least two of Orbit's current customers, Alcan and Ensign Bickford, are interpreted to be the public in the context of KRS 278.010(3)(b)(c).

2. Orbit is a utility as defined in KRS 278.010(3)(b)(c) and should file a tariff with the Commission.

3. Orbit's continued sales of natural gas to its existing customers should not adversely affect Western's residential ratepayers, and may provide an incentive to Western to continue searching for the lowest priced gas available.

IT IS THEREFORE ORDERED that:

1. Orbit shall file with the Commission within 30 days of the date of this Order a tariff containing schedules of all its rates, charges and tolls, maps of the areas in which it offers service, and all its rules and regulations, for approval by the Commission.

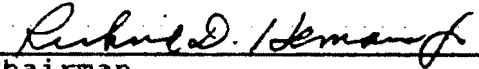
2. Orbit's filing shall follow the requirements in 807 KAR 5:011.

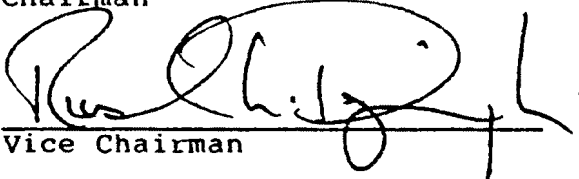
3. Orbit shall continue to supply its customers of record as of the date of this Order, but shall not arrange to supply additional customers until its tariff schedules and other related information have been approved by the Commission.

4. The complaint filed by Western against Orbit is hereby dismissed subject to receipt and approval of Orbit's tariff schedules and related information.

Done at Frankfort, Kentucky, this 9th day of January, 1986.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

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Secretary