

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE INVESTIGATION OF EAST KENTUCKY)	
UTILITIES, INC. FOR FAILURE TO)	CASE NO. 90-011
COMPLY WITH KRS 278.300)	

O R D E R

On January 23, 1990, the Commission issued an Order directing East Kentucky Utilities, Inc. ("East Kentucky") to show cause why it should not be penalized under KRS 278.990 "for violating provisions of KRS Chapter 278 including KRS 278.300." The Order was issued on the finding that East Kentucky "had sought and obtained financing without Commission approval. . . ." On February 20, 1990, the Order was extended to include Floyd County, Kentucky ("Floyd County") as the owner of the gas utility operated by East Kentucky.

The hearing to show cause was held before the Commission on February 28, 1990 at which time East Kentucky and Floyd County appeared and were represented by counsel. At the hearing the parties stipulated and agreed to the following:

1. On November 10, 1989, Floyd County and East Kentucky executed and delivered to the Commonwealth of Kentucky, acting for the use and benefit of the Department of Local Government's Gas Restoration Project Account, their promissory note in the principal amount of \$292,221.90 and that prior to executing the

note neither Floyd County nor East Kentucky obtained formal authority to do so from the Commission.

2. The affidavit of David Allen, president of East Kentucky, and the documents attached to the affidavit as exhibits A through R, inclusive, shall be a part of the evidence in these proceedings.

DISCUSSION

East Kentucky is a non-stock, non-profit corporation organized for the purpose of operating and managing Floyd County's gas utility distribution system. On November 10, 1989, Floyd County and East Kentucky obtained a loan from the Department of Local Government by executing a promissory note in the amount of \$292,221.90. Under the terms of the note, the debt is payable solely from revenues of East Kentucky and does not constitute an obligation of Floyd County.

The proceeds of the loan were used to pay outstanding and delinquent gas bills owed to South Eastern Gas and Kentucky West Virginia Gas, suppliers of natural gas to East Kentucky. By paying them in full, the suppliers waived \$111,947.60 in interest which had accrued on the bills.

Floyd County and East Kentucky maintain that the loan was obtained upon the Commission's recommendation and with the Commission's full knowledge. They contend, therefore, that even though formal approval was not obtained from the Commission prior to obtaining the loan, they had the Commission's tacit approval.

Floyd County in a separate response to the February 20, 1989 Order has also requested that it be stricken from these

proceedings. Floyd County maintains that as a governmental agency within the meaning of KRS 58.010(3), it stands simply as a lessor in its relation to East Kentucky and that it only executed the promissory note to assist East Kentucky in obtaining the loan. Floyd County has no Certificate of Convenience and Necessity to operate the gas system and because it has no obligation to pay the note incurred in behalf of the system, Floyd County contends that it is not within the jurisdiction of the Commission.

KRS 278.010(3) defines a utility as any person "who owns, controls or operates or manages any facility" used for the sale or distribution of natural gas to the public. As the owner of the natural gas system operated by East Kentucky, Floyd County is a "utility" within the meaning of this statutory provision and is therefore within the jurisdiction of the Commission.

KRS 278.300(1) provides as follows:

No utility shall issue any securities or evidences of indebtedness . . . until it has been authorized so to do by order of the commission.

Clearly, the action of East Kentucky and Floyd County in executing a promissory note without first obtaining Commission approval was in violation of this statutory provision. Therefore, pursuant to the provisions of KRS 278.990(1), a penalty of \$750 against East Kentucky and against Floyd County would be appropriate under the circumstances.

IT IS THEREFORE ORDERED that:

1. East Kentucky and Floyd County are in violation of KRS 278.300 for executing a promissory note in the sum of \$292,221.90 without first obtaining Commission approval.

2. For the violation as set forth herein, East Kentucky and Floyd County shall each pay a penalty of \$750.

3. The penalty shall be paid within 30 days of the date of this Order by certified check or money order made payable to the Treasurer, Commonwealth of Kentucky. The check or money order shall be mailed or delivered to the Office of General Counsel, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602.

Done at Frankfort, Kentucky, this 27th day of April, 1990.

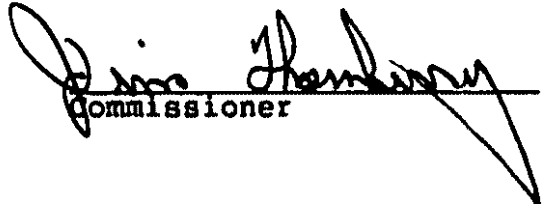
PUBLIC SERVICE COMMISSION

Chairman



Robert M. Davis

Vice Chairman



Jimmie Hankins

Commissioner

ATTEST:



Lee M. McCracken

Executive Director