

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF ASHLAND EXPLORATION,))
INC.) CASE NO. 91-396

O R D E R

On or about October 9, 1991, Ashland Exploration, Inc. ("Ashland Exploration") notified its customers that effective November 1, 1991 Ashland Exploration would increase its rates for natural gas service to those customers served pursuant to KRS 278.485 and those served pursuant to leases or rights-of-way agreements. According to the notice, each customer was directed to execute a new service contract with Ashland Exploration by October 31, 1991 or Ashland Exploration would discontinue existing service. The rates which were being charged by Ashland Exploration ranged from a low of 35 cents per Mcf to \$3.09 per Mcf and Ashland Exploration proposed to raise the rates to these customers to \$5.25 per Mcf.

The Commission received several informal complaints from customers served by Ashland Exploration and initiated this proceeding to investigate the proposed increase. On December 23, 1991, Ashland Exploration filed a motion to dismiss this proceeding, to delay answers to Commission data request, to cancel the hearing and submitted a memorandum in support of its motion. In its memorandum, Ashland Exploration represented to the Commission that information would be sent to the Federal Energy

Regulatory Commission ("FERC") sufficient to allow FERC to make a two-fold determination: 1) whether the gas sold by Ashland Exploration to its domestic customers is subject to a federal maximum lawful price; and, 2) whether Ashland Exploration has the contractual authority to charge that price. Pending FERC's determination on the two issues, the Commission held its ruling on Ashland Exploration's motion to dismiss in abeyance.

A group known as the Pike County Citizens United for Justice ("Citizens") filed a written complaint with this Commission and made an identical simultaneous filing with FERC. Citizens claim that the proposed new service contract terminates, or ignores, without cause, contracts its members have with Ashland Exploration. Citizens represents approximately 300 of Ashland Exploration's approximately 2,000 domestic customers. Ashland Exploration asserts in its response to FERC that its contracts/agreements either allow or do not preclude price adjustments and, further, that the \$5.25 per Mcf rate is based on the pricing methodology previously approved by FERC.

FERC issued its order on the Citizens complaint in docket No. GP92-7-000 on April 14, 1992. In interpreting Section 101(b)(9) of the Natural Gas Policy Act ("NGPA"), FERC stated that the existence of higher ceiling rates does not supersede or nullify any lower contractual rates, and, in referring to a 1981 decision setting the maximum lawful prices for Ashland Exploration, FERC previously found that ". . . the various sales contracts covering the gas priced under the weighted average methodology have not been

reviewed by the [FERC] and [FERC] in no way passes upon the question of what prices Ashland Exploration is authorized to collect under its contracts." FERC found the issue raised by Citizens to be the proper interpretation of their contracts with Ashland Exploration and whether those contracts authorize Ashland Exploration to change its rates. FERC dismissed the complaint deferring it to federal court, state court, or this state commission to decide, finding it had no more special expertise in interpreting contract provisions under state law than either the state courts or a state commission. No hearing was held at FERC.

Although the NGPA clearly gives FERC the authority to set the maximum lawful price for gas moving in interstate commerce, once the authority is granted to divert gas from the interstate stream for use by domestic customers, KRS 278.485 and KRS 278.040 give this Commission authority to set the fair, just, and reasonable rate to be charged to domestic customers. Section 602 of the NGPA further provides that a state may establish or enforce maximum lawful prices lower than those under the NGPA for "first sales" of gas produced in that state. In its order dismissing the Citizens complaint, FERC clearly recognizes that Ashland Exploration's sales to its domestic customers are "first sales" as defined under the NGPA. This Commission agrees. Therefore, the weighted average pricing methodology can be used by Ashland Exploration to determine the maximum lawful price for its gas, but, the Kentucky PSC after review, may establish a rate lower than the maximum or, if the maximum is found reasonable, may enforce the maximum lawful rate.

Pennzoil Co. v. PSC of W. Virginia, 327 S.E.2d 444, cert denied 106 S.Ct. 74 (1985).

Ashland Exploration, in its motion to dismiss, relies extensively upon the Sixth Circuit ruling in Public Service Commission v. FERC, 610 F.2d 439 (6th Cir. 1979) for the proposition that FERC maintains exclusive jurisdiction over the rates charged by Ashland Exploration thereby preempting this Commission from jurisdiction. However, Ashland Exploration's reliance upon the Sixth Circuit ruling appears misplaced. The Sixth Circuit specifically held that the Kentucky Public Service Commission could not order an interstate pipeline to divert gas from interstate commerce for use by Kentucky consumers. However, in this proceeding Ashland Exploration admits, and FERC in its order recognized, that the appropriate abandonment authority was received from FERC by Ashland Exploration and its predecessor City Services Company. Once abandonment authority is granted by FERC, as is the case here, Section 602 of the NGPA clearly allows the states to establish or enforce maximum lawful prices that are lower than those set by FERC for first sales of gas produced in the state.

After consideration of the record in this matter, the motion to dismiss of Ashland Exploration, and the response of Citizens and arguments of counsel at the hearing held July 8, 1992 and being otherwise sufficiently advised, the Commission finds that the motion to dismiss filed by Ashland Exploration should be denied and that this case should proceed to a hearing on its merits.

IT IS THEREFORE ORDERED that:

1. Ashland Exploration's motion to dismiss be and it hereby is denied.

2. Ashland Exploration shall provide notice to its customers in accordance with 807 KAR 5:011, Section 8, of the rate it proposes to charge those customers and of the customers' right to intervene in this proceeding. Ashland Exploration shall, pursuant to 807 KAR 5:011, Section 8(5), publish notice of the hearing to be held October 27, 1992. Said notice shall be published no earlier than October 6, 1992 and no later than October 19, 1992.

3. All parties shall adhere to the procedural schedule attached hereto and incorporated herein as an Appendix to this order.

4. Within 10 days of the date of this Order, Ashland Exploration shall provide the information required in Ordering Paragraph 4 of the Commission's October 31, 1991 Order in the instant case.

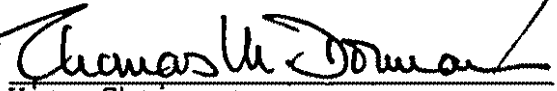

Done at Frankfort, Kentucky this 24th day of July, 1992.

PUBLIC SERVICE COMMISSION


Chairman

ATTEST:


Executive Director, Acting


Vice Chairman

Commissioner

APPENDIX

APPENDIX TO AN ORDER OF THE PUBLIC SERVICE COMMISSION
IN CASE NO. 91-396 DATED 7/24/92

Prefiled Testimony from Ashland Exploration
due on or before.....8/14/92

Information Requests to Ashland Exploration
due on or before8/28/92

Responses to Information Requests due on
or before.....9/11/92

Prefiled Testimony from Citizens due on
or before.....9/25/92

Information Requests to Citizens due on
or before.....10/9/92

Responses to Information Requests due on
or before.....10/23/92

Public Hearings to Begin at 10:00 a.m.,
Eastern Standard Time, in Hearing Room 1,
of the Commission's offices at 730 Schenkel
Lane, Frankfort, Kentucky.....11/04/92