

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PROPOSED ABANDONMENT OF SERVICE BY)
MAGOFFIN GAS COMPANY, INC.)
)
) CASE NO. 95-417
)
)
AN INVESTIGATION TO DETERMINE THE NEED)
FOR AN APPOINTMENT OF A RECEIVER FOR)
MAGOFFIN GAS COMPANY, INC. PURSUANT TO)
KRS 278.021)
)
)
THE PETITION OF SIGMA GAS COMPANY FOR)
APPROVAL OF TRANSFER OF MAGOFFIN GAS) CASE NO. 95-560
COMPANY)
)

O R D E R

On December 18, 1995, Sigma Gas Company, Inc. ("Sigma") filed an application with the Commission requesting approval to acquire facilities currently owned by Magoffin Gas Company ("Magoffin Gas"). The Commission has pending before it Case No. 95-417 wherein Magoffin Gas has proposed abandoning the facilities which Sigma proposes to acquire. Although Magoffin Gas has not formally withdrawn its request to abandon the facilities, approval of the acquisition in question will negate the necessity for approving the proposed abandonment.

KRS 278.020(4) requires the Commission to approve the transfer if the person acquiring the utility has the financial, technical and managerial abilities to provide reasonable service. To make

the requisite showing, Sigma represents that the same personnel who presently operate Sigma's system will operate the acquired facilities after the transfer. Approving Sigma's acquisition of the facilities will ensure continued operation of the system and continued service for the 15 customers of Magoffin Gas.

Sigma further represents that its current manager, Estill Branham, has considerable experience in the management of gas utilities, specifically Auxier Road Gas Company, which he owns, and Johnson County Gas Company which he presently manages and proposes to own.¹ The Commission is well aware of the history of Mr. Branham's management of the aforementioned utilities and that certain of his management practices have been called into question.² Therefore, the Commission is unable to reach a conclusion under KRS 278.020(4). However, as these gas facilities would otherwise be abandoned, the Commission finds that the acquisition by Sigma should nonetheless be approved under KRS 278.020(5) which requires that the Commission approve proposed acquisitions which are to be made in accordance with law, for a proper purpose, and consistent with the public interest. The application in this matter has been filed in accordance with law and serving the public is a proper purpose. Given the hardship

¹ Case No. 95-580, The Petition of Dusmike Natural Gas Company for Approval of Transfer of Johnson County Gas Company. This application is currently pending before the Commission.

² Case No. 91-392, Johnson County Gas Company, Inc., Alleged Failure to Comply with Commission Order from Case No. 10415. This case is currently on appeal.

which would result to the public if the facilities were abandoned and that the proposed transfer is the only alternative to avoid such a result, the Commission finds that the acquisition by Sigma is in the public interest.

Sigma has further requested that the Commission grant it permission to deviate from the requirements of 807 KAR 5:011, Section 11, by not adopting Magoffin's rates. However, Sigma has executed and filed an adoption notice ratifying and adopting the current tariffs of Magoffin Gas. While Sigma argues that approving the deviation to allow these customers to be served at Sigma's present rates is in the public interest given the emergency nature of the application and the pending abandonment of facilities, the Commission is not persuaded to waive the adoption notice requirement. Granting the deviation would result in a sizeable rate increase to the customers currently served by Magoffin Gas and the requested deviation should be denied.

Based upon the record of this case, the Commission finds that the acquisition is to be made in accordance with law, for a proper purpose, and is consistent with the public interest.

IT IS THEREFORE ORDERED that:

1. Sigma's proposed acquisition of the Magoffin Gas facilities is hereby approved.

2. Sigma's request for permission to deviate from 807 KAR 5:011, Section 11, is hereby denied. Sigma shall within 10 days of the date of this Order, refile the adoption notice issued on December 11, 1995 in the format required by 807 KAR 5:011.

3. Magoffin Gas's application to abandon gas service is moot since approval to transfer is granted herein. Case No. 95-417 is accordingly dismissed.

Done at Frankfort, Kentucky, this 3rd day of January, 1996.

PUBLIC SERVICE COMMISSION

Linda K. Breathitt
Chairman

E. J. [Signature]
Vice Chairman

Robert M. Davis
Commissioner

ATTEST:

Don Mills
Executive Director