COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE PETITION OF DUSMIKE NATURAL GAS COMPANY FOR APPROVAL OF TRANSFER OF JOHNSON COUNTY GAS COMPANY	)))	CASE NO. 95-580

O R D E R

On December 20, 1995, Dusmike Natural Gas Company, Inc. ("Dusmike"), incorporated on November 17, 1995 by Estill Branham as sole shareholder, filed its petition requesting approval to acquire the assets of Johnson County Gas Company, Inc. In its petition, Dusmike requested reinstatement of a surcharge terminated by the Commission by Order dated June 1, 1994 in Case No. 91-392.[1] According to Dusmike, reinstatement of the surcharge was necessary to allow repayment of the long-standing financial obligations of Johnson County Gas that Dusmike would assume if the acquisition was approved.

By Order dated January 3, 1996 the Commission found the petition was flawed on its face as Dusmike admitted its inability to make a showing of financial ability required by KRS 278.020(4). The Commission also found that given the history of this particular utility, including the period the utility was under the management of Estill Branham, it could not find the acquisition to be in the public interest under KRS 278.020(5).

Dusmike filed a petition for rehearing on January 30, 1996 requesting an opportunity to present Dusmike's financial,

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[1] Case No. 91-392, Johnson County Gas Company, Inc., Alleged Failure to Comply with Commission Order From Case No. 10415.

managerial and technical qualifications to the Commission. Dusmike has also offered to withdraw that portion of its original petition requesting reinstatement of the surcharge, if necessary.

The legal arguments offered by Dusmike in support of its requested rehearing have no merit. For instance, Dusmike argues that the surcharge previously authorized by the Commission in Case No. 10415 was the fair, just, and reasonable rate for Johnson County Gas and could not be "suspended" by the Commission in Case No. 91-392 without a finding that the total rate, including the surcharge, was unreasonable. This argument has no factual or legal basis. In authorizing the surcharge in the first instance, the Commission explicitly stated that it was for the sole purpose of retiring the debts to the Department of Local Government ("DLG") and Columbia Gas and was subject to immediate termination if used for any unauthorized purpose. There has been no finding by this Commission that Johnson County Gas's rate is unreasonable, nor is one required by KRS Chapter 278. The Commission terminated the surcharge based upon findings that the surcharge revenues were not escrowed properly, and, specifically, were used for a purpose that was not authorized by the terms of the Settlement or the Commission's Order approving same. Pursuant to the Settlement terms and the Order, Johnson County Gas's rates, exclusive of the surcharge, remained the same and remain the same to this day, except as adjusted by periodic purchased gas adjustment filings.

Obviously, these arguments are an attempt to collaterally attack the Commission's determinations regarding Johnson County Gas's rates and Mr. Branham's role which led to termination of the

surcharge. It is true that Dusmike was not a party to those proceedings. However, it is also true that Dusmike has no legal standing to collaterally attack those issues herein. While the individual who would control the operations of Dusmike if it were authorized to provide utility service is the same individual found to have misused the surcharge proceeds, the issue before the Commission is whether Dusmike, under the control and direction of Mr. Branham as sole shareholder, has made a prima facie showing that the representations required by law are supported in fact. They are not.

South Central Bell Telephone Co. v. Utility Regulatory Comm., Ky., 637 S.W.2d 649 (1982) relied upon by Dusmike in support of its petition for rehearing, is inapposite for several reasons. First, the holding in Bell applies to rates set by the Commission for a utility. Dusmike is not yet providing utility service and thus does not meet the statutory definition of a utility under KRS 278.010. Second, Bell holds that the PSC acts beyond the scope of its statutory authority when, in a rate hearing, it imposes a rate reduction penalty against a public utility for alleged poor service. Gas service provided by Johnson County Gas was never an issue upon which authorization to collect or termination of the surcharge was based. Finally, as noted before, Dusmike has no standing to challenge the Commission's determinations related to Johnson County Gas by collateral attack or otherwise.

The petition is also rife with misstatements that are easily disproved and omissions of relevant facts that are easily gleaned from public documents on file with the Commission.

1. The Commission authorized the assumption of the DLG indebtedness by Order dated October 6, 1980 in Case No. 7875[2] in the principal amount of $1,071,374. The Commission further authorized loan proceeds to be used for payment of arrearages related to gas purchases from Columbia Gas of Kentucky, Inc. ("Columbia Gas") in the amount of $44,237.70. Final Order attached as Appendix A.

2. Johnson County Gas filed for Chapter 11 bankruptcy protection on January 18, 1983. A final plan of reorganization was approved by the U.S. Bankruptcy Court on March 6, 1986 and the Kentucky Municipal Gas Utility Investment Trust became the sole shareholder of Johnson County Gas. The Commonwealth of Kentucky, (and, specifically the Department of Local Government) and Columbia Gas became the Trustees. Revenues from operations were to be used to retire the DLG debt (stated as $1,321,374, secured) and the debt to Columbia Gas (stated as $65,085 secured and $156,682.21 unsecured). Plan of Reorganization and Order Confirming the Plan attached as Appendix B.

3. The Trust executed a management contract with Estill Branham (now before the Commission as the sole shareholder of Dusmike) effective January 1, 1989, renewed July 1, 1991 which delegated responsibility for day-to-day fiduciary matters relating

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[2] Case No. 7875, The Application of the Johnson County Gas Company, Inc., Johnson County, Kentucky for (1) Certificate of Public Convenience and Necessity Authorizing Reconstruction of Its Existing Gas System; and (2) Approval of the Proposed Plan of Financing the Reconstruction and to Retire Urgent and Pressing Debts.

to Johnson County Gas to Mr. Branham. Both contracts are attached as Appendix C.

4. In Case No. 10415 a Settlement Agreement was executed by Estill Branham and all members of the Trust agreeing to specific terms for Johnson County Gas regarding collection, escrow, and disbursement of the surcharge revenues for the sole purpose of retiring the arrearages owed to DLG and Columbia Gas. The Settlement Agreement was approved by Commission Order dated October 30, 1990. Attached as Appendix D.

5. Case No. 91-392 was initiated to investigate noncompliance with the Commission's final Order in Case No. 10415. In its Order of June 1, 1994, the Commission found that prima facie evidence existed that Estill Branham procured, aided, and abetted Johnson County Gas's alleged failure to comply with the Commission's Order in Case No. 10415. Attached as Appendix E.

6. A final Order was entered by the Commission in Case No. 91-392 on November 14, 1994. The Commission found, inter alia,:

> [T]he Commission is left with the inescapable conclusion that Mr. Branham has acted knowingly, willfully, intentionally, and in flagrant disregard of the Orders of this Commission and the rights and interests of Johnson County Gas's customers. Accordingly, the Commission finds that Estill Branham should be penalized in his individual capacity, for his willful failure to comply with its prior Orders.
>
> Although a penalty is not being assessed against Johnson County Gas at this time, the Commission does not imply that the Trust has been blameless in this matter. Its role in allowing Mr. Branham to shuffle company funds at will, employ family members, and channel business through family owned and operated companies has been to the detriment of the customers served by Johnson County Gas.

> Allowing the funds collected from those customers for the express purpose of repaying debt owed to a governmental agency to be used for the purposes described above is an abuse of the public trust.

Mr. Branham has appealed the Order. Estill Branham v. Public Service Commission, 94-CI-1822, Franklin Circuit Court, Division I. Attached as Appendix F.

Since 1980, Johnson County Gas has carried the authorized indebtedness to DLG on its books of account. Since 1980, the ratepayers of Johnson County Gas have provided revenues which should have been used to reduce significantly both the debt to DLG and to Columbia Gas. Since 1989, Estill Branham has been responsible for the day-to-day operations of Johnson County Gas including the collection of revenues and payment of obligations from those revenues. In 1990, a surcharge was authorized for the sole purpose of retiring arrearages owed to DLG and Columbia Gas. Between 1990 and termination of the surcharge, Johnson County Gas, under the management of Mr. Branham, collected surcharge revenues of over $300,000. Since 1990, Johnson County Gas, under the management of Mr. Branham, has disbursed a grand total of $44,500 to DLG and $5,500 to Columbia Gas in revenues collected via the surcharge. Simple arithmetic indicates that Johnson County Gas's customers have paid over $250,000 to a company managed by Mr. Branham which they would be required to pay again to another company wholly owned by Mr. Branham if Dusmike's proposal were approved.

Dusmike's application also reflects the fact that it has already obtained a loan of $100,000 to facilitate the purchase of

these assets, i.e. to pay the Columbia Gas debts and to provide working capital if the acquisition is approved. While this transaction is not covered by the contract to purchase the assets from the Trust, if the acquisition were approved, the obligation would be recorded on the books of Dusmike as a liability for which rate recovery could be requested. Since loan proceeds of $70,000 would be used to pay-off the indebtedness to Columbia Gas, the ratepayers of Johnson County Gas would again have to pay to cover a liability which should already have been reduced via the surcharge.

Given the history reiterated in this Order, the Commission once again reaches an inescapable conclusion, no prima facie showing has been made that Dusmike under the management and control of Mr. Branham has the financial and managerial abilities required by law or that the transfer is in the public interest. The ratepayers of Johnson County Gas have contributed surcharge revenues since 1990 that should have been used to retire a portion of both debts.

It would be unconscionable for the Commission to ignore that fact and require the ratepayers to once again contribute revenues to retire the portion which, but for the actions of Mr. Branham, should no longer be carried on Johnson County Gas's books. That is precisely what the applicant herein requires if the acquisition is approved. Based upon the foregoing, the petition of Dusmike, and the petition for rehearing, the Commission finds that absent a showing of forgiveness of that portion of the DLG debt that should

have been retired had the surcharge funds been used for the authorized purpose, and absent a showing that the $100,000 loan obtained by Mr. Branham in the name of Dusmike for the stated purpose of purchasing the assets will not become a recorded liability subject to repayment by Johnson County Gas's existing customers, Dusmike will remain unable to make a prima facie showing that the acquisition of Johnson County Gas's assets and continued financial and managerial direction of Mr. Branham are in the best interests of the customers or the public.

To grant the petition for rehearing despite the fact that it is fatally flawed would require the Commission to turn a blind eye to the customers' welfare and the public interest. This it declines to do.

IT IS THEREFORE ORDERED that Dusmike's petition for rehearing is denied.

Done at Frankfort, Kentucky, this 20th day of February, 1996.

PUBLIC SERVICE COMMISSION

Linda Breathitt
Chairman

Edward J. Holmes
Vice Chairman

Robert M. Davis
Commissioner

ATTEST:

Don Mills
Executive Director

APPENDIX A
AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 95-580 DATED FEBRUARY 20, 1996

COMMONWEALTH OF KENTUCKY

BEFORE THE ENERGY REGULATORY COMMISSION

* * * *

In the Matter of

THE REQUEST OF THE JOHNSON COUNTY GAS COMPANY FOR AN EXEMPTION FROM 807 KAR 50:015 (DEVELOPMENT OF A BUDGET PLAN)	)	CASE NO. 7576
AND		
TRANSFER OF STOCK OF JOHNSON COUNTY GAS COMPANY, INC.	)	CASE NO. 7743
AND		
THE APPLICATION OF THE JOHNSON COUNTY GAS COMPANY, INC., JOHNSON COUNTY, KENTUCKY	)	CASE NO. 7875
FOR		
(1) CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AUTHORIZING RECONSTRUCTION OF ITS EXISTING GAS SYSTEM; AND	)	
(2) APPROVAL OF THE PROPOSED PLAN OF FINANCING THE RECONSTRUCTION AND TO RETIRE URGENT AND PRESSING DEBTS.	)	

O R D E R

On September 19, 1980, the Commission issued its Interim Order consolidating the above-styled cases for the purposes of analysis, decision and order and denying the transfer of ownership under the proposed terms and conditions. In addition, a further hearing was set for September 24, 1980, to take additional testimony, addressing all issues raised in these cases (Nos. 7576, 7743 and 7875) and to allow the Company to show cause, if any it could, why its certificate of convenience and necessity should not be revoked. The hearing was held as scheduled with one intervenor, Columbia Gas of Kentucky (Columbia), a gas supplier of Johnson County Gas Company, Inc., being present. Columbia's intervention is solely for the purpose of seeking to have the proceeds from the proposed financing applied to the retirement of the $44,237.70 owed to it by Johnson County Gas Company, Inc.

At this hearing, on September 24, 1980, the parties to the proposed transfer of ownership requested that the Commission reconsider and approve the transfer under modified terms and conditions set out in a Memorandum of Understanding dated September 24, 1980.

The Commission, after consideration of the additional evidence presented at the hearing of September 24, 1980, and all prior evidence of record, concluded that the proposed transfer of ownership under the modified terms and conditions of the Memorandum of Understanding would be in the best interest of the consumers and should be approved. It was therefore ordered from the bench that said transaction be, and it was approved. The Commission is hereby reaffirming this Order.

In addition, the Commission ordered from the bench that the Company should be temporarily closed in order to evaluate the system and the possible dangers to the consumers of the system. However, after further testimony by Mr. Preston as to the possible damage to the system and the effects that closing the system would have on the consumers, the Commission determined that its closure order should be stayed until further hearing. It therefore set a further hearing for October 1, 1980, at 1:30 p.m. (EDT) in the Commission's offices in Frankfort, Kentucky. Further, the Commission informed the Company that at said hearing it would be required to present testimony concerning the loan application; the measures it plans to take to improve the system; and any reasons why its certificate of convenience and necessity should not be revoked.

The hearing was held as scheduled on October 1, 1980, with one intervenor, the Attorney General's Division of Consumer Intervention, being present. Testimony presented at this hearing indicates that the management of Johnson County Gas Company has taken steps to place both the two supply lines from Columbia Gas and the distribution mains that serve Van Lear in a condition that can reasonably be expected to provide safe, reliable service during the upcoming heating season. Mr. Preston and the consulting engineering firm of Heath and Associates have further stated that steps are being

taken to assure that emergency temporary measures are underway to provide continued service from Kentucky West Virginia Gas Company supply to the Hager Hill-East Point section. At the close of all testimony, the entire matter was submitted for final determination by the Commission.

COMMENTARY

This agency is charged by statute with the responsibility of seeing that safe and adequate service is provided to the customers served by the public utilities in this state. Therefore, the Commission is greatly concerned with the virtual lack of maintenance performed over the years on this gas system and the deficiencies, which relate to State and Federal Regulations for safe transportation of gas by pipeline systems as cited in the Staff Inspection Report dated September 10, 1980. With the proceeds from the loan approved herein, the Commission is of the opinion that this system can be reconstructed to enable it to provide adequate gas service to its customers. However, in order for the service to also be safe, all deficiencies cited in the Staff Inspection Report must also be rectified in a timely manner as outlined in attached Appendix "A".

A further area of immense concern to the Commission is the manner in which the Company proposed to effect the transfer of ownership. The Company proposed to record on its books 994 shares of its common stock as treasury stock. The remaining six (6) shares would be owned by Mr. Danny Preston and his wife, Betty. The debt incurred to purchase this stock would likewise be recorded on the books of the Company as a debt of the Company. It is obvious to the Commission that this is a transaction set up for the purpose of taking advantage of all possible tax benefits to the Company. While recording the transaction in this matter is legal and is proper for general accounting and tax purposes, the effect would be to require the rate payer to pay the interest cost on the debt. The Commission therefore wishes to apprise the Company, as well as

its stockholders, Mr. and Mrs. Preston, that neither this interest cost nor the excess of the purchase price over the net original cost will be recognized for ratemaking purposes.

FINDINGS AND ORDERS

The Commission, having carefully considered all evidence of record, is of the opinion and FINDS that:

(1) The Commission's closure order should be stayed indefinitely.

(2) Johnson County Gas Company suffered a line loss for the month of July (at the reduced summer pressure of 12 pounds) of 45.2% for the Van Lear area and 70.3% for the Hager Hill area and that such line loss not only represents a potential source of danger to the consumers but also makes it impossible for the Company to remain solvent.

(3) The proposed reconstruction and renovation, which must be begun immediately in order that substantial construction can be completed this construction season, will eliminate or greatly reduce the excessive line loss. The correction of this problem is necessary to assure continued and safe gas service for the consumers of Johnson County Gas Company, Inc. It is therefore in the public interest and should be approved.

(4) Any construction deviations from the proposed plans and specifications, which could adversely affect service to any consumer, or safety to the public should be subject to the prior approval of this Commission.

(5) The design, fabrication, installation, testing, operation and maintenance of all gas piping shall be done under the supervision of one whose credentials are known and are acceptable to the Energy Regulatory Commission.

(6) Installation and replacement of gas piping shall be performed only by a qualified installer or fitter, who is experienced in such work, familiar with all precautions required, and has complied with all requirements of applicable regulations.

(7) Johnson County Gas Company, Inc., should file with this Commission weekly reports reflecting the number and magnitude of leaks repaired in their emergency repair program. This reporting shall continue until such time as the line loss is brought to a level that can reasonably be expected to provide safe and reliable service.

(8) Within sixty (60) days of the date of substantial completion of the construction authorized herein, the Company should require the Engineer to furnish this Commission with a copy of the "As-Built Plans" and a certification that the construction has been satisfactorily completed in accordance with the plans and specifications.

(9) The Company's present financial condition is such that it will be unable to continue operating without the proposed loan, as it is currently unable to either pay its indebtedness or obtain further credit.

(10) The proposed borrowing by the Applicant of $1,071,374 from the federal Economic Development Administration through the Kentucky Department for Local Government is for a lawful object within the corporate purposes of the utility, is necessary and appropriate for and consistent with the proper performance by the utility of its service to the public and will not impair its ability to perform that service and is reasonably necessary and appropriate for such purpose.

(11) Johnson County Gas Company, Inc., should immediately file with this Commission and implement its plan for budget billing in compliance with 807 KAR 50:015(11).

The Commission therefore ORDERS that:

(1) The Commission's closure order is stayed and shall remain stayed as long as the Company continues to operate in a responsible, safe manner.

(2) Johnson County Gas be and it is hereby granted a certifica of convenience and necessity to reconstruct and renovate its gas syste

(3) The proposed construction shall be performed in accordance with the applicable Federal and State Regulations.

(4) Any construction deviations from the proposed plans and specifications, which could adversely affect service to any consumer, or safety to the public shall be subject to the prior approval of this Commission.

(5) Johnson County Gas Company be and it hereby is authorized to borrow from the federal Economic Development Administration throug the Department for Local Government the sum of $1,071,374 at an interest rate of 5.125%.

(6) The funds authorized herein shall be used only for the purposes of renovating and reconstructing its system and paying the indebtedness set out in the record.

(7) Johnson County Gas Company, Inc. shall file with this Commission weekly reports reflecting the number and magnitude of leaks repaired in their emergency repair program. This reporting shall continue until such time as the line loss is brought to a level that can reasonably be expected to provide safe and reliable service.

(8) The Company shall submit monthly reports to the Commission setting forth in detail the status of the proposed renovation and reconstruction as well as the status of the funds authorized for said construction.

(9) The Company shall submit quarterly financial statements to the Commission until such time as the Commission is assured as to the financial stability of the Company.

(10) Johnson County Gas Company, Inc., shall file with this Commission, no later than ten (10) days from the date of this Order, its plan for budget billing in compliance with 807 KAR 50:015(11).

(11) If the Company receives no notice from the Commission that said plan is disapproved, the Company shall make known to its customers the availability of its plan and place said plan in full operation no later than November 1, 1980.

(12) Johnson County Gas Company, Inc., shall correct the deficiencies, which relate to State and Federal Regulations for safe transportation of gas by pipeline systems, in accordance with the schedule set out in attached Appendix "A".

(13) The Company shall file within thirty (30) days its financial statements reflecting the transactions approved by this Commission.

(14) The Company shall require the Engineer to furnish this Commission, within sixty (60) days of the date of substantial completion, a copy of the "As-Built Plans" and a certification that the construction has been satisfactorily completed in accordance with the plans and specifications.

Nothing contained herein shall be deemed a finding of value or a warranty on the part of the Commonwealth of Kentucky or any agency thereof as to the borrowings authorized herein.

Done at Frankfort, Kentucky, this the 6th day of October, 1980.

By the Commission

ATTEST:

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Secretary

APPENDIX "A"

APPENDIX TO AN ORDER OF THE ENERGY REGULATORY COMMISSION IN CASES NO. 7576, 7743 and 7875 DATED OCTOBER 6, 1980.

The Commission finds it necessary to establish a schedule of compliance to insure a timely solution to the deficiencies listed in the Commission's Staff Report dated September 10, 1980, regarding the inspection of Johnson County Gas Company. The schedule that is established is as follows:

(1) To be complied with within 7 days from the date of this Order:

(a) Establish continuing surveillance program in accordance with 49 CFR 192.613;

(b) Conduct a leak survey of its transmission lines and establish a schedule for periodic survey in accordance with 49 CFR 192.706;

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(c) Establish a system of transmission line record keeping in accordance with 49 CFR 192.709;

(d) Conduct a leak survey of its distribution system lines and establish a schedule for periodic surveys in accordance with 49 CFR 192.723;

(e) Establish records for recording customer complaints as required by 807 KAR 50:015 Section 8;

(f) Obtain copies of publications and codes adopted by the Energy Regulatory Commission as standards of accepted good practice as outlined in 807 KAR 50:035 Section 3;

(g) Establish a standard method of meter and service line installations as required by 807 KAR 50:035 Section 11(4);

(h) Establish a system of record keeping with regard to continuity of service as required by 807 KAR 50:035 Section 17.

(2) To be completed within thirty (30) days from the date of this Order:

(a) The requirements of 49 CFR 192.13 and 192.14 with regard to system conversion.

(b) Comply with the filing requirements of 49 CFR 192.17 regarding inspection and maintenance plans.

(c) Comply with the requriements of CFR 192.51, 192.53, 192.55 and 192.59 with regard to the selection and qualification of pipe and components used in pipelines.

(d) Establish procedures for the inspection and joining of materials other than by welding in accordance with 49 CFR 192.273, 192.281, 192.283, 192.285 and 192.287.

(e) Establish specifications for the construction of transmission lines in accordance with 49 CFR 192.303.

(f) Establish a written operating and maintenance plan and keep records necessary to administer the plan as required by 49 CFR 192.603.

(g) Establish a written Emergency Plan as required by 49 CFR 192.615.

(h) Establish written procedures for the investigation of failures as required by 49 CFR 192.617.

(i) Establish procedures for the reinstating of service lines as requried by 49 CFR 192.725.

(3) To be completed within ninety (90) days from the date of this Order:

(a) Install emergency valves as necessary and establish a program for valve maintenance as required by 49 CFR 192.181, 192.745 and 192.747.

(b) Install necessary telemetering or recording gauges as required by 49 CFR 192.741 and 807 KAR 50:035 Section 14.

(c) Establish a standard heating valve for its gas and file the information required by 807 KAR 50:035 Section 8.

(4) To be completed in the course of reconstruction of the system but not later than September 1, 1981:

(a) Replace copper pipe in the system for which specifications are not known. Reference 49 CFR 192.61.

(b) Replace system valves for which the rating are not known. Reference 49 CFR 192.145.

(c) Install supports and anchors on all lines requiring them, as required by 49 CFR 192.161.

(d) Install regulators as required by 49 CFR 192.197.

(e) Replace all pressure relief and limiting devices that do not meet the requirements of 49 CFR 192.199.

(f) Calculate flow and test pressure relieving and limiting stations as required by 49 CFR 192.201.

(g) Protect all transmission lines from hazards as required by 49 CFR 192.317.

(h) Install all plastic pipe below ground and install tracer wires as required by 49 CFR 192.321.

(i) All transmission lines shall be buried with a minimum cover as prescribed in 49 CFR 192.327.

(j) All service lines shall meet the requirements of 49 CFR 192.361.

(k) All service lines shall have service-line valves installed that meet the requirements of 49 CFR 192.363.

(l) Establish a corrosion control program that meets the requirements of 49 CFR 192.451 through 192.491.

(m) Establish and apply proper procedures for uprating the operating pressure in the system in accordance with 49 CFR 192.551 through 192.557

(n) Establish a maximum allowable operating pressure for the system in accordance with 49 CFR 192.621 and maintain a standard system pressure in accordance with 807 KAR 50:035 Sections 15 and 16.

(o) Eliminate all unsafe segments of pipeline and repair all hazardous leaks (49 CFR 192.703)

(p) Install line markers as required by 49 CFR 192.707.

(q) Establish a program for testing pressure limiting and regulating station and station relief devices as required by 49 CFR 192.739 and 192.743.

(r) Discontinue service to all customers where a dangerous condition is found to exist on the customer's premises. [807 KAR 50:015 Section 11(1)(b)]

(s) Establish provisions for meter testing and establish a meter record system as required by 807 KAR 50:015 Sections 13 and 15, and 807 KAR 50:035 Sections 13, 18 and 19.

APPENDIX B

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 95-580 DATED FEBRUARY 20, 1996

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

IN THE MATTER OF: **CHAPTER 11**

JOHNSON COUNTY GAS COMPANY

DEBTOR **NO. 83-2**

PLAN OF REORGANIZATION

This Plan of Reorganization, dated ~~September~~ December 3, 1985, is filed by Kentucky Department of Local Governments and Columbia Gas of Kentucky, Inc., creditors herein.

DEFINITIONS

The following terms, when used in this plan, shall, unless the context otherwise requires, have the following meanings respectively;

DEBTOR: Johnson County Gas Co., a Kentucky corporation now pending in this Court as a Debtor with a Reorganization Trustee operating the business.

CHAPTER 11: Chapter 11 of the United States Bankruptcy Code.

REORGANIZATION CASE: The case for the reorganization of the Debtor commenced by involuntary petition under Chapter 11 of the United States Bankruptcy Code on January 18, 1983 styled: IN THE MATTER OF: JOHNSON COUNTY GAS CO., Bankruptcy Case No. 83-2.

COLUMBIA GAS: Columbia Gas of Kentucky, Inc., a creditor herein.

COURT: The United States Bankruptcy Court for the Eastern District of Kentucky, Pikeville Division, acting in this case.

CONFIRMATION OF THE PLAN: The entry by this Court of an order confirming the plan in accordance with Chapter 11 of the United States Bankruptcy Code.

CONSUMMATION OF THE PLAN: The accomplishment of all things contained or provided for in this Plan in the

pending proceedings as shown by and the entry of an Order of Consummation finally dismissing the case.

CORPORATION OR REORGANIZED CORPORATION: The Debtor, in its corporate status, after consummation of the Plan as a reorganized corporation, except as otherwise noted from the context herein contained.

DLG: The Commonwealth of Kentucky Department of Local Government, a creditor herein.

PLAN: This Plan of Reorganization.

STOCK: The common stock of the Debtor, both issued and unissued.

TRUST: A Kentucky business trust created by certain creditors of the Debtor and known as The Kentucky Municipal Gas Utility Investment Trust, which will become the ultimate and sole stockholder of the corporation.

TRUSTEE: B. E. Mullins, currently acting under appointment by this Court as reorganization trustee in this reorganization case.

ARTICLE I
CLASSIFICATION OF CLAIM OR INTEREST

CLASS 1.

Administrative Expense Claims. Each claim as described in Section 503(a)(2) and 507(a)(1) upon application and allowance by the court pursuant to Section 330(a) of the Code, and court costs, if any, for attorney's fees for B.E. Mullins, Reorganization Trustee, and the claims due Columbia Gas pursuant to Section 507(a)(3) and (4) in the amounts of $118,133.16 (gap expenses) and $30,724.83 (attorney's fees of Petitioning Creditors), or a total to Columbia Gas of $146,676.29, and Columbia Gas of Kentucky and Commonwealth of Kentucky Department of Local Governments for reimbursement of GRW Engineers appraisal, equally, not to exceed $15,000.00.

CLASS 2.

Current Operating Expenses. All operating expenses, including taxes, on the books of the debtors, or accrued, and due and owing currently in the ordinary course of the debtor's operations, as are in existence as of the date of the Consummation of this Plan.

CLASS 3.

Secured Claim - Small Business Administration. The secured debt of the United States of America Small Business

Administration in the approximate amount of $13,887.54, bearing interest at the rate of 6-5/8% per annum, which debt was and is being paid currently by way of monthly installments and is not in default, which constitutes a first mortgage upon the assets of the debtor.

CLASS 4.

Secured Claim - Columbia Gas. The claim secured by real property collateral in favor of Columbia Gas, which claim is hereby allowed as secured to the extent of $65,085.00, plus interest at the rate of 8% per annum from August 19, 1981, until paid, and which constitutes a fully secured but second lien on the real property of the debtor, subject only to the secured claim of the Class 3 creditor mentioned above.

CLASS 5.

DLG's Claims. The secured claim of the Kentucky Department of Local Governments in the amount of $1,321,374.00, plus contract interest thereon at the rate of 5.125%, secured by all of the assets of the debtor, subject only to the secured claims of the Class 3 and 4 creditors, which debt is in default and which claim is allowed herein in the amount previously mentioned, including interest thereon.

CLASS 6.

Unsecured Claim. The unsecured claim of Columbia Gas of Kentucky, Inc. in the amount of $156,682.21, not secured by any collateral, being the amount of the unsecured pre-petition debt of said creditor.

CLASS 7.

Stockholders. The existing stockholders of the Debtor, being Mr. and Mrs. Danny Preston, who hold five shares more or less of the authorized 1,000 shares of the Debtor.

ARTICLE II
TREATMENT OF CLASSIFIED CLAIMS

CLASS 1 - Administrative Expense Claims.

The administrative expense claims described in Class 1 shall be paid in full in cash on or before the Consummation of the Plan, provided, however, that the claim of B.E. Mullins shall be based upon an allowance of his commissions and fees by the court upon proper application, notice and a hearing thereon, and the claims of Columbia Gas shall be paid in the amounts set forth in Article I hereinbefore. Thereafter, the claims of Columbia Gas and DLG

for reimbursement of the GRW appraisal fee will be paid equally to each creditor. Any shortages in cash at time of payment shall be paid out of the Corporation, in cash, as soon as practicable after Confirmation, and shall have first priority as to all other Classes herein except the Class 2 operating expenses and the Class 3 SBA monthly payment. If payments are made, the Trustee shall receive his allowance first; then the amounts due Columbia Gas, then the amounts due Columbia Gas and DLG equally.

CLASS 2 - Current Operating Expenses.

The claims of creditors for all operating expenses, including taxes, existing as of the Consummation of the Plan, and as defined in Article I, shall be assumed by the Corporation and paid according to their terms and in the ordinary course of the business of the Corporation.

CLASS 3 - Secured Claim - Small Business Administration

The secured claim of the United States of America Small Business Administration shall be assumed by the Corporation and paid according to its terms in the ordinary course of the business of the Corporation.

CLASS 4 - Secured Claim - Columbia Gas

The secured claim of Columbia Gas shall be paid in monthly cash installments of 1/12th of its claim for twelve consecutive months, with interest at the rate of 8% thereon to be paid in succeeding months thereafter, beginning in the first month following Consummation of the Plan.

CLASS 5 AND 6 - Other Claims and Unsecured Claim

The claims of DLG and Columbia Gas in Classes 5 and 6 respectively shall be paid together pro rata (i.e. as each claim bears a percentage to the two combined claims), in full, by quarterly cash payments decreed by the Corporation out of profits, surplus cash or unused cash, after taking into consideration adequate reserves for future operating needs, maintenance, repairs, replacement and retirement of Class 1 and 4 claims; after the Class 3 and 4 claims have been paid in full, the sums previously available to the Class 3 and 4 creditors shall be applied to the Class 5 and 6 creditors until said debts (including DLG interest according to its debt instruments) have been paid in full.

CLASS 7 - Stockholders

The interests of the stockholders, being stock in a corporation that is both insolvent and bankrupt, shall, upon consummation, be cancelled and voided, and thereafter be of no legal effect, and said interestholders shall cease being

stockholders in the corporation.

ARTICLE III
CLAIMS OR INTEREST IMPAIRED BY THE PLAN

The claims of creditors in Class 1 are being paid in full at or immediately following Consummation and therefore are not impaired and shall be deemed to have accepted the Plan;

The claims of creditors in Classes 2 and 3 are current and are being assumed by the reorganized corporation and are not impaired and shall be deemed to have accepted the Plan;

The claim of the creditor in Class 4 will retain its collateral, which value is in excess of its claim, and will be paid out by monthly payments by the reorganized corporation, and therefore is not impaired and shall be deemed to have accepted the Plan;

The claims of the creditors in Classes 5 and 6 will be paid by deferred payment, but since such payments are deferred, their claims are impaired and they must accept the Plan as a class; and

The claim of the stockholders has no value via equity in the Debtor and is therefore not impaired, and shall be deemed to have accepted the Plan.

ARTICLE IV
EXECUTORY CONTRACTS

Any executory contracts or unexpired leases in effect in the within action as of the date of Consummation shall be assumed by the reorganized corporation, if not in default thereto. If in default, the curing of same shall be accomplished by a grant of a §507(a)(1) priority, and will be paid at Consummation immediately prior to payments to creditors in Class 1.

ARTICLE V
GENERAL PROVISIONS

Until the case is closed, the court shall retain jurisdiction to insure that the purposes and intent of this Plan are carried out, to hear and determine all claims against the Debtor, and to enforce all causes of action which may exist on behalf of the Debtor. Nothing herein contained shall preclude the reorganized corporation from taking such action as may be necessary in the enforcement of any cause of action which may exist on behalf of the Debtor and which have not been enforced or prosecuted by the Trustee.

ARTICLE VI
EFFECT OF CONFIRMATION

Notwithstanding provisions in the United States Bankruptcy Code to the contrary, the confirmation of this plan shall vest all of the property of the estate of the Debtor in the reorganized corporation, free and clear of all claims and interest of any creditors, equity security holders and stockholders, and shall discharge the Debtor from any debts (other than those specifically treated under this Plan) that arose before the date of such confirmation, any debt of a kind specified in Sections 502(g), (h) and (i) of the United States Bankruptcy Code, whether or not a proof of claim based upon said debt was filed or deemed filed under Section 501 of United States Bankruptcy Code, whether or not such claim is allowed under Section 502 of United States Bankruptcy Code and whether or not the holder of such claim has accepted the plan, and confirmation shall terminate all rights and interests of equity security holders and the stockholders, as provided for by the Plan, and that the provisions of subsections 2 of Section 1141 of the United States Bankruptcy Code are not controlling.

ARTICLE VII
RETENTION OF ASSETS AND LIENS

The Corporation shall retain all of the assets held by it as of the effective date of the Plan, but said assets shall continue to remain liened in favor of the creditors in Classes 3, 4 and 5, which liens shall remain in effect until the conclusion of the payments of all sums due and owing said creditors. Any assets to be disposed of or liquidated pending payment of Class 4 creditors shall be only with the permission of said creditor and the proceeds thereof shall be used to pay such Class 4 creditors and the proceeds then remaining of any such sale be paid over to Classes 5 and 6 creditors to the extent provided for in Article II.

ARTICLE VIII
CANCELLATION AND REISSUE OF STOCK

Upon consummation of the Plan, the stock held by the interestholders in Class 7 shall be cancelled and voided and shall be of no legal effect, and said stockholders shall cease being stockholders in the corporation, and all of the stock of the Debtor shall be issued and delivered to the Trust.

ARTICLE IX
PROVISIONS FOR CONTINUATION OF CORPORATE OPERATIONS

The following provisions shall apply to the reorganized corporation until the provisions of this Plan

have been fully complied with, except to the extent as limited therein:

1. Immediately prior to or at Consummation, the Trustee shall cause to be voided and cancelled on the Debtor's books and records all of the stock issued and held by the Class 7 Stockholders.

2. At Consummation and prior to the Trustee's termination as Trustee, he shall cause to be issued all shares of the Debtor's stock to the Trust, same to be fully paid-up capital stock of the Corporation.

3. Immediately following the responsibilities set forth in 1 and 2 above, the Trustee shall cease all activities as Trustee, and his appointment shall terminate without further court order.

4. Immediately upon Consummation, the ownership of all of the issued outstanding stock of the Debtor, as vested in the Trust, shall authorize control of the reorganized corporation in the board of directors of the Corporation.

5. The Board of Directors of the reorganized corporation shall be the trustees of the Trust.

6. Immediately following termination of the Trustee's appointment, B.E. Mullins shall assume control of the reorganized corporation's business, and shall, subject to the direction of the board of directors, be president, general manager and secretary-treasurer of the reorganized corporation.

7. The trustees of the Trust, as directors of the reorganized corporation, shall exercise their sound business discretion and best efforts to operate the corporation profitably and to pay the claims of creditors in all classes herein, provided however, the board shall be required to pay the claims of creditors in Classes 1 through 4 inclusive, except for extraordinary circumstances preventing same, and then only upon full disclosure, accounting and explanation to said creditors, and provided further that the priorities set forth in this Plan and the other terms contained herein, are specifically assumed by the Trustees and cannot be altered by the board of directors or the Trust, unless consent is made in writing by the affected party specifically setting forth its consent with reference to this section herein.

ARTICLE X
MISCELLANEOUS PAYMENT PROVISIONS

1. The Corporation shall have sole authority to determine the amount(s) of the distribution to the Class 5 and 6 claimants, but shall make payment of all amounts equal

to the Class 3 and 4 claimants' amounts after the Class 3 and 4 claims have been paid in full.

2. The Corporation shall have the authority, at any time after (but not before) the Class 4 claimant has been paid in full to sell the Corporation by stock transfer from the Trust or to sell the assets of the Corporation for any sum believed by the Trust to be the fair value of the stock or assets, and pay the cash proceeds of the sale to the Class 5 and 6 claimants pro rata.

PEDLEY, ROSS, ZIELKE & GORDINIER

BY: Lawrence L. Pedley

LAWRENCE L. PEDLEY
1705 Meidinger Tower
Louisville Galleria
Louisville, KY 40202
ATTORNEYS FOR KENTUCKY
DEPARTMENT OF LOCAL GOVERNMENT

12-31-85

BUNCH & BROCK

BY: W Bunch

W. THOMAS BUNCH
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805 Security Trust Building
271 West Short Street
Lexington, KY 40594
Telephone: 606-254-5522
THOMAS E. MORGAN, General
Counsel, JAMES L. FULLIN,
Asst. General Counsel, and
STEPHEN B. SEIPLE, Attorney,
Columbia Gas of Kentucky,
Inc., P. O. Box 117,
Columbus, OH 43216-0117
Telephone: 614-460-4648
ATTORNEYS FOR COLUMBIA
GAS OF KENTUCKY, INC.

EASTERN DISTRICT OF KENTUCKY
FILED
MAR 0 6 1986
AT LEXINGTON
BETTY L. JENNETTE, CLERK
U. S. BANKRUPTCY COURT

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON

IN THE MATTER OF: CHAPTER 11

JOHNSON COUNTY GAS COMPANY

DEBTOR NO. 83-2

ORDER CONFIRMING PLAN

The Plan of Reorganization, having been filed in the within Court and having been voted on by the creditors, and the Motion for the Approval of the Disclosure Statement and Form of Ballot, having been brought on for hearing before this Court on motion filed on December 30, 1985, and heard by the Court upon proper notice on February 21, 1986, and said motion also to confirm the Plan of Reorganization, having been properly noticed and heard at the same time, and the Plan of Reorganization having been a creditors' plan and there being no need for a time period between the approval of the disclosure statement and the hearing on the confirmation thereof, and the objectors to the plan having no objection to the approval of the disclosure statement or the confirmation hearing on February 21, 1986, and the Court having heard proof offered at that time and a record having been made thereof, and the Court further having reviewed the "Memorandum and Response of the Debtor and of Danny and Betty Preston to the Motion for Approval of Disclosure Statement

and to Motion to Approve Proposed Plan of Reorganization," and the Court having heard the respective attorneys and further having overruled the objections of the Debtor and of Danny and Betty Preston, and the Court further having made Findings of Fact and Conclusions of Law from the bench, and the Court having determined, after said notice and hearing, the following:

1. That the Plan complies with the applicable provisions of Chapter 11 of the Code;

2. That the proponents of the Plan have complied with the applicable provisions of the Code;

3. That the Plan has been proposed in good faith and not by any means forbidden by law;

4. That with respect to each class, such class has accepted the Plan or such class is not impaired under the Plan;

5. With respect to such creditors, such creditor of each class has accepted the Plan or will receive or retain under the Plan on account of such claim property of a value, as of the effective date of the Plan, that is not less than the amount that such holder would so receive or retain if the Debtor were liquidated under Chapter 7;

6. That at least one class of claims has accepted the Plan, determined without including acceptance of the Plan by an insider holding a claim of such class;

7. That confirmation of the Plan is not likely to be followed by the liquidation, or the need for further

financial reorganization, of the Debtor or any successor to the Debtor under the Plan;

AND, THEREFORE, IT IS ORDERED that the Plan of Reorganization filed herein by the creditors, a copy of which is in the record herein, is hereby confirmed.

Given at Lexington, Kentucky on this the 6 day of March, 1986.

JOE LEE
BANKRUPTCY JUDGE

Copies to:

W. Thomas Bunch
P.O. Box 2086
Lexington, KY 40594

Lawrence Pedley
Pedley, Ross, Zielke & Gordinier
1705 Meidlinger Tower
Louisville Galleria
Louisville, KY 40202

Thomas E. Morgan & James L. Fullin
and Stephen B. Seiple
Columbia Gas of Kentucky
P.O. Box 117
Columbus, OH 43216-0117

B.E. Mullins
Reorganization Trustee
P.O. Box 387
Paintsville, KY 41240-0387

John C. Ryan
212 Washington Street
Frankfort, KY 40601

Benjamin C. Cubbage, Jr.
Cubbage & Thomason
P.O. Box 17
Owensboro, KY 42420

Small Business Administration
3220 Nicholasville Rd.
Lexington, KY 40503

Small Business Administration
600 Federal Place
Louisville, KY 40201

APPENDIX C

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 95-580 DATED FEBRUARY 20, 1996

MANAGEMENT AGREEMENT

This Management Agreement by and between the KENTUCKY MUNICIPAL GAS UTILITY INVESTMENT TRUST, a Kentucky business trust (hereinafter the "Trust"), and ESTILL B. BRANHAM (hereinafter "Branham"), is entered into in Frankfort, Kentucky, on December 29, 1988.

WITNESSETH

WHEREAS, the Trust is the owner and the members of the Trust are the board of directors of Johnson County Gas Company, Inc., (hereinafter sometimes the "Company"), a Kentucky public utility, and wishes to engage a manager to operate said company and provide said manager a right of first refusal to purchase said company if the Trust should elect to sell same during the term of the management engagement; and

WHEREAS, Branham wishes to act as manager of Johnson County Gas Company and operate said company and receive a right of first refusal to purchase said company if the Trust should elect to sell same during the term of the management engagement;

NOW THEREFORE, the parties hereby contract and agree as follows:

ARTICLE I

1.1 The Trust hereby engages the services of Branham to act as manager of Johnson County Gas Company, Inc., to operate said company and its natural gas distribution system in a safe, reasonable and prudent manner in accordance with all applicable state, federal, and local laws and the terms of this Management Agreement.

1.2 The Trust shall appoint Branham to the offices of president and secretary-treasurer of Johnson County Gas Company, Inc., to serve during the term of this Management Agreement subject to the Articles and Bylaws of said corporation and the terms hereof.

1.3 Branham shall be paid the sum of Eighteen Thousand Dollars ($18,000.00) annually by Johnson County Gas Company, Inc., payable monthly at the rate of One Thousand Five Hundred Dollars ($1,500.00).

1.4 Branham shall report to the Trust on the operation, affairs, and status of Johnson County Gas Company, Inc., from time to time, including a monthly financial report reflecting all revenues and expenditures of the company for the

period, an annual report reflecting the assets and liabilities and income and expenses of the company for the period, and an annual report on the business and regulatory activities of the company for the period. In addition, Branham shall report to the Trust from time to time on such matters as the Trust may request.

1.5 Branham shall have and exercise all ordinary and necessary authority and control over the operations and business affairs of Johnson County Gas Company, Inc., as may be conferred on the president and secretary-treasurer of the company under the Articles and Bylaws and as may be required by the laws of the Commonwealth of Kentucky and the Plan of Reorganization dated December 3, 1985, as approved by the United States Bankruptcy Court, Eastern District of Kentucky, Pikeville Division, In The Matter Of: Johnson County Gas Company, Debtor, No. 83-2; PROVIDED HOWEVER, that extraordinary expenditures by the company shall be approved in advance by the Trust, except for such extraordinary expenditures as may be required by emergency situations or regulatory requirements; and FURTHER PROVIDED that the Trust may audit the books and records of Johnson County Gas Company, Inc., at its discretion at the expense of the company.

ARTICLE II

2.1 Branham is hereby granted a right of first refusal to purchase any right, title and interest of the Trust in Johnson County Gas Company, Inc., as the Trust may elect to sell, assign, or convey to others during the term of this Management Agreement on the same terms and conditions as the Trust may specify to said proposed purchasers.

2.2 The Trust shall notify Branham of its intention to sell, assign, or convey a specific right, title or interest in the company to others and the specific terms and conditions of the proposed sale or transfer not less than sixty (60) days in advance of any such proposed sale or transfer, and shall not effect said sale or transfer during said sixty-day period unless Branham shall notify the Trust during said sixty-day period that he ~~it~~ elects not to exercise the right of first refusal granted in this Article.

2.3 During the sixty-day period following formal notice to Branham given by the Trust as provided in this Article, Branham shall have the exclusive right to acquire the right, title or interest in the company which the Trust proposes to sell, assign, or convey to others on the same terms and conditions specified by the Trust to such others, and may elect to exercise or decline to exercise said right by so notifying the Trust in writing during said sixty-day period.

2.4 Upon the expiration of the sixty-day period specified herein for any proposed sale, assignment, or conveyance without the Trust receiving formal notification in writing from Branham of the exercise of the exclusive right

granted in this Article, said right shall terminate as to that particular proposed sale, assignment, or conveyance.

2.5 Nothing contained in this Article shall require the Trust to offer to sell, assign, or convey any interest in the Company during the term of this Management Agreement; or, except as expressly provided in this Article, to accept or decline any particular offer to purchase any right, title, or interest in the Company from any offeror; or to prevent the parties to this Management Agreement from negotiating an agreement for the sale, assignment, or conveyance of a right, title, or interest in the company from the Trust to Branham during the term of this Management Agreement on such terms and conditions as may be mutually satisfactory.

ARTICLE III

3.1 The term of this Management Agreement shall be for a period of thirty (30) months beginning on January 1, 1989, unless sooner terminated pursuant to the terms of this Article.

3.2 This Management Agreement may be terminated by either party upon thirty (30) days written notice delivered to the other party at the business address specified in this Management Agreement.

ARTICLE IV

4.1 Neither this Management Agreement nor any rights or interests created herein shall be assignable by either party without the written consent of the other party obtained not less than thirty (30) days in advance of said assignment.

4.2 This Management Agreement and all rights, obligations, terms, and conditions herein shall be subject to and governed by the laws of the Commonwealth of Kentucky, the orders of the Kentucky Public Service Commission, and the terms of the Plan of Reorganization dated December 3, 1985, as approved by the United States Bankruptcy Court, Eastern District of Kentucky, Pikeville Division, In The Matter Of: Johnson County Gas Company, Debtor, No. 83-2.

4.3 All notices, notifications, reports, and communications pursuant to this Management Agreement shall be delivered to the parties as follows:

TO THE TRUST:

LEE TROUTWINE
COMMISSIONER
DEPARTMENT OF LOCAL GOVERNMENT
FRANKFORT, KY 40601

RICHARD S. TAYLOR
OFFICE OF THE GOVERNOR
STATE CAPITOL BUILDING
FRANKFORT, KY 40601

DONALD J. CROUCH
COLUMBIA GAS OF KENTUCKY
POST OFFICE BOX 241
LEXINGTON, KY 40584

TO BRANHAM:

ESTILL B. BRANHAM
POST OFFICE BOX 1084
PRESTONSBURG, KY 41653

4.4 This Management Agreement shall be effective as of January 1, 1989.

Estill B. Branham

Estill B.Branham

Lee Troutwine, Trustee
Kentucky Municipal Gas Utility Investment Trust

Richard S. Taylor, Trustee
Kentucky Municipal Gas Utility Investment Trust

Donald J. Crouch, Trustee
Kentucky Municipal Gas Utility Investment Trust

MANAGEMENT AGREEMENT

This Management Agreement by and between the KENTUCKY MUNICIPAL GAS UTILITY INVESTMENT TRUST, a Kentucky business trust (hereinafter the "Trust"), and ESTILL B. BRANHAM (hereinafter "Branham"), is entered into in Frankfort, Kentucky, on July 1, 1991.

WITNESSETH

WHEREAS, the Trust is the owner and the members of the Trust are the board of directors of Johnson County Gas Company, Inc., (hereinafter sometimes the "Company"), a Kentucky public utility, and wishes to engage a manager to operate said company; and

WHEREAS, Branham wishes to act as manager of Johnson County Gas Company and operate said company;

NOW THEREFORE, the parties hereby contract and agree as follows:

ARTICLE I

1.1 The Trust hereby engages the services of Branham to act as manager of Johnson County Gas Company, Inc., to operate said company and its natural gas distribution system in a safe, reasonable and prudent manner in accordance with all applicable state, federal, and local laws and the terms of this Management Agreement.

1.2 The Trust shall appoint Branham to the offices of president and secretary-treasurer of Johnson County Gas Company, Inc., to serve during the term of this Management Agreement subject to the Articles and Bylaws of said corporation and the terms hereof.

1.3 Branham shall be paid the sum of Eighteen Thousand Dollars ($18,000.00) annually by Johnson County Gas Company, Inc., payable monthly at the rate of One Thousand Five Hundred Dollars ($1,500.00).

1.4 Branham shall report to the Trust on the operation, affairs, and status of Johnson County Gas Company, Inc., from time to time, including a monthly financial report reflecting all revenues and expenditures of the company for the period, an annual report reflecting the assets and liabilities and income and expenses of the company for the period, and an annual report on the business and regulatory activities of the company for the period. In addition, Branham shall report to the Trust from time to time on such matters as the Trust may request.

1.5 Branham shall have and exercise all ordinary and necessary authority and control over the operations and business affairs of Johnson County Gas Company, Inc., as may be conferred on the president and secretary-treasurer of the company under the Articles and Bylaws and as may be required by the laws of the Commonwealth of Kentucky and the Plan of Reorganization dated December 3, 1985, as approved by the United States Bankruptcy Court, Eastern District of Kentucky, Pikeville Division, In The Matter Of: Johnson County Gas Company, Debtor, No. 83-2; PROVIDED HOWEVER, that extraordinary expenditures by the company shall be approved in advance by the Trust, except for such extraordinary expenditures as may be required by emergency situations or regulatory requirements; and FURTHER PROVIDED that the Trust may audit the books and records of Johnson County Gas Company, Inc. at its discretion at the expense of the company.

ARTICLE II

2.1 Nothing contained in this Agreement shall prevent the Trust from offering to sell, assign, or convey any interest in the Company during the term of this Management Agreement; or from accepting or declining to accept any offer to purchase any right, title or interest in the Company from any entity; or prevent the parties to this Agreement from negotiating an agreement for the sale, assignment, or conveyance of any right, title or interest in the Company from the Trust to Branham during the term of this Agreement on such terms and conditions as may be mutually satisfactory.

ARTICLE III

3.1 The term of this Management Agreement shall be for a period of one year beginning on July 1, 1991, and renew automatically for a period of one year, unless terminated pursuant to the terms of this Agreement.

3.2 This Management Agreement may be terminated by either party upon thirty (30) days written notice delivered to the other party at the business address specified in this Agreement, or upon the sale of the Company.

ARTICLE IV

4.1 Neither this Management Agreement nor any rights or interests created herein shall be assignable by either party without the written consent of the other party obtained not less than thirty (30) days in advance of said assignment.

4.2 This Management Agreement and all rights, obligations, terms, and conditions herein shall be subject to and governed by the laws of the Commonwealth of Kentucky, the orders of the Kentucky Public Service Commission, and the terms of the

Plan of Reorganization dated December 3, 1985, as approved by the United States Bankruptcy Court, Eastern District of Kentucky, Pikeville Division, In The Matter Of: Johnson County Gas Company, Debtor, No. 83-2.

4.3 All notices, notifications, reports, and communications pursuant to this Management Agreement shall be delivered to the parties as follows:

TO THE TRUST:

LEE TROUTWINE
COMMISSIONER
DEPARTMENT OF LOCAL GOVERNMENT
FRANKFORT, KY 40601

L. ROGERS WELLS, JR.
OFFICE OF THE GOVERNOR
STATE CAPITOL BUILDING
FRANKFORT, KY 40601

DONALD J. CROUCH
COLUMBIA GAS OF KENTUCKY
POST OFFICE BOX 241
LEXINGTON, KY 40584

TO BRANHAM:

ESTILL B. BRANHAM
POST OFFICE BOX 1084
PRESTONSBURG, KY 41653

4.4 This Management Agreement shall be effective as of July 1, 1991.

Estill B. Branham

Estill B. Branham

Lee Troutwine, Trustee
Kentucky Municipal Gas Utility Investment Trust

L. Rogers Wells, Jr., Trustee
Kentucky Municipal Gas Utility Investment Trust

Donald J. Crouch, Trustee
Kentucky Municipal Gas Utility Investment Trust

APPENDIX E

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 95-580 DATED FEBRUARY 20, 1996

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOHNSON COUNTY GAS COMPANY, INC.	)	
	)	
	)	CASE NO. 91-392
ALLEGED FAILURE TO COMPLY WITH COMMISSION ORDER FROM CASE NO. 10415	)	

O R D E R

By Order dated October 30, 1990 in Case No. 10415,[1] the Commission, inter alia, authorized Johnson County Gas Company, Inc. ("Johnson County") to assess a surcharge, the proceeds of which were to be used to pay debts to Columbia Gas of Kentucky, Inc. ("Columbia") and the Department of Local Government ("DLG"). The Commission further ordered that Johnson County place all surcharge proceeds in escrow and use them exclusively to pay the Columbia and DLG debts. The surcharge was to cease immediately upon extinguishment of these debts or if the surcharge proceeds were used for any reason other than repayment of these two debts.

On April 15, 1994, the Commission in this proceeding ordered Johnson County to provide certain information related to the surcharge. Johnson County's response to this Order indicates that, while over $300,000 in surcharge revenue should have been collected based on its sales between November 1990 and March 1994, only $44,500 has been disbursed from the surcharge account to DLG and

[1] Case No. 10415, An Investigation of the Rates of Johnson County Gas Company, Inc.

$5,500 to Columbia to reduce those respective obligations. Johnson County has admitted that the difference between the surcharge revenue collected and its debt payments "was used for the operation of the [C]ompany." Johnson County's Response to the Commission's Order of April 15, 1994, Item 3. Its monthly general ledger statements, moreover, indicate that all proceeds from the surcharge were not placed in escrow.

Based upon the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. Prima facie evidence exists that in willful violation of the Commission's Order of October 30, 1990 Johnson County failed to deposit all surcharge proceeds into an escrow account and that it used the surcharge proceeds to fund its operations.

2. Prima facie evidence exists that Estill Branham, Johnson County's manager, procured, aided and abetted Johnson County's alleged failure to comply with the Commission's Order of October 30, 1990.

3. Pursuant to the terms of the Order of October 30, 1990, authorization to assess and collect the surcharge for payment of debts owed by Johnson County to DLG and Columbia should be terminated immediately. Johnson County should immediately cease the assessment and collection of this surcharge.

IT IS THEREFORE ORDERED that:

1. Effective immediately, authorization to assess and collect the surcharge for payment of debts owed by Johnson County to DLG and Columbia is terminated.

2. Johnson County shall cease immediately the assessment and collection of the surcharge authorized by the Commission's Order of October 30, 1990.

3. Johnson County shall appear before the Commission on July 6, 1994 at 10:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky, for the purpose of presenting evidence concerning its alleged failure to comply with the Commission's Order of October 30, 1990, and of showing cause why it should not be subject to the penalties prescribed in KRS 278.990(1) for its alleged failure.

4. Estill Branham, in his individual capacity, shall appear before the Commission on July 6, 1994 at 10:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky, for the purpose of presenting evidence concerning his alleged misconduct in procuring, aiding and abetting Johnson County's alleged failure to comply with the Commission's Order of October 30, 1990, and of showing cause why he should not be subject to the penalties prescribed in KRS 278.990(1) for his alleged misconduct.

5. Johnson County and Estill Branham shall each submit to the Commission, within 20 days of the date of this Order, a written response to the allegations contained herein.

Done at Frankfort, Kentucky, this 1st day of June, 1994.

By the Commission

ATTEST:

Don Mills

Executive Director

APPENDIX F

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 95-580 DATED FEBRUARY 20, 1996

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

GENERAL COUNSEL

In the Matter of:

JOHNSON COUNTY GAS COMPANY, INC.	)	
	)	
	)	CASE NO. 91-392
	)	
ALLEGED FAILURE TO COMPLY WITH COMMISSION ORDER FROM CASE NO. 10415	)	

O R D E R

Johnson County Gas, formerly a Kentucky Corporation which has now been administratively dissolved, provides gas service to approximately 537 customers in Johnson County, Kentucky. The Kentucky Municipal Gas Utility Investment Trust ("Trust") currently owns Johnson County Gas. This Trust was created under a plan of reorganization approved by the U.S. Bankruptcy Court. The Commonwealth of Kentucky and Columbia Gas of Kentucky, Inc. ("Columbia Gas") are the sole shareholders of the Trust. Estill Branham is responsible for day-to-day operations pursuant to a management contract. At the time the Trust was created, Johnson County Gas owed $1,321,374 to the Department of Local Government and $156,682 to Columbia Gas. In Case No. 10415,[1] the Commission accepted a settlement which authorized Johnson County Gas to assess a surcharge on its customer bills for the sole purpose of reducing the obligations to the Department of Local Government and Columbia

[1] Case No. 10415, Investigation of Johnson County Gas Company, Inc. Final Order dated October 30, 1990.

Gas.[2] All surcharge proceeds were to be escrowed and used exclusively for that purpose. No other use was permitted. At the same time the Commission placed reporting requirements[3] on Johnson County Gas. It is from the Order in Case No. 10415 that the question of compliance arises.

On April 15, 1994, in the instant case the Commission ordered Johnson County Gas to provide certain information related to the surcharge. Johnson County Gas's response to the order indicated that while over $300,000 in surcharge revenue was billed based upon sales between November 1990 and May 1994, only $44,500 has been disbursed to the Department for Local Government and $5,500 to Columbia Gas.[4] Estill Branham has admitted under oath that the difference between the surcharge revenue billed and Johnson County Gas's debt payments was used for the operation of the Company.[5]

The question of whether Johnson County Gas, and specifically Estill Branham in his individual capacity, have complied with the terms of our October 30, 1990 Order in Case No. 10415 must be answered negatively. Estill Branham admits knowledge of the terms of the settlement,[6] and acknowledges he signed the settlement on

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2 Id.

3 Id.

4 Johnson County Gas's response to April 15, 1994 Order.

5 Transcript of Evidence (T.E.) at 30-33. (All references to T.E. refer to transcript of July 6, 1994 hearing unless otherwise noted.)

6 T.E. at 18-21.

behalf of Johnson County Gas, thereby agreeing to the terms.[7] Members of the Trust also signed the Settlement.

As the manager of the company, Estill Branham had control of and was responsible for collection and disbursement of the surcharge funds. Mr. Branham admitted that the surcharge monies were used to pay operating expenses of the company,[8] a use which was not authorized by the Commission and was in direct violation of its order to escrow the surcharge proceeds. The record reflects that Estill Branham used the surcharge funds in part to pay contractual expenses to KISU Service Company, Inc.[9] This company is, according to Mr. Branham, owned by his daughters who are also on the payroll of Johnson County Gas.[10]

Mr. Branham is familiar with and knowledgeable of the regulatory process, having operated several gas companies within the Commission's jurisdiction and having participated in numerous Commission proceedings during his long tenure in the gas business.[11] Mr. Branham should have sought rate relief from the Commission, if, in fact, operating revenues were insufficient to meet the company's obligations as they became due. Mr. Branham admits he sought no direction from the Trust regarding any

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7 Id. at 18.

8 Id. at 30-33.

9 Id. at 68-69.

10 Id. at 15, 68.

11 Id. at 11-12.

insufficiency of operating revenues.[12] Mr. Branham further admits that he used the surcharge proceeds to fund a $30,000 working capital requirement allegedly directed by the Trust[13] and which constitutes another unauthorized use under the specific terms of the settlement agreement.

The record reflects that actual collection of the surcharge funds from the customers began in November 1990, yet deposits to an escrow account did not begin until May 1992, several months after this case was initiated.[14] Most disturbing to the Commission is the fact that $288,348 of the billed surcharge was never deposited in the escrow account or remitted to the Department of Local Government or Columbia Gas.

After reviewing the record in this proceeding, the transcript of both hearings, and the responses provided by Mr. Branham, the Commission is left with the inescapable conclusion that Mr. Branham has acted knowingly, willfully, intentionally, and in flagrant disregard of the Orders of this Commission and the rights and interests of Johnson County Gas's customers. Accordingly, the Commission finds that Estill Branham should be penalized in his individual capacity, for his willful failure to comply with its prior Orders.

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12 Id. at 70.

13 Id. at 31-32.

14 Id. at 38-43.

Although a penalty is not being assessed against Johnson County Gas at this time, the Commission does not imply that the Trust has been blameless in this matter. Its role in allowing Mr. Branham to shuffle company funds at will, employ family members, and channel business through family owned and operated companies has been to the detriment of the customers served by Johnson County Gas. Allowing the funds collected from those customers for the express purpose of repaying debt owed to a governmental agency to be used for the purposes described above is an abuse of the public trust.

IT IS THEREFORE ORDERED that:

1. A penalty in the amount of $2,000 is assessed against Estill Branham in his individual capacity for his willful failure to comply with the terms of the Commission's October 30, 1990 Order.

2. Estill Branham shall pay the assessed penalty from his personal funds within 20 days of the date of this Order by certified or cashier's check made payable to "Treasurer, Commonwealth of Kentucky." Said check shall be delivered to the Office of General Counsel, Public Service Commission of Kentucky, 730 Schenkel Lane, P. O. Box 615, Frankfort, Kentucky 40602.

3. Estill Branham shall within 2 working days of the date of this Order disburse not less than $13,882, the balance of the cash surcharge escrow account as of September 31, 1994, according to the following pro rata distribution: Department of Local Government - 89 percent; Columbia Gas - 11 percent. Estill Branham shall

certify within 10 days to the Commission that same has been done in compliance with this Order.

4. Estill Branham and Johnson County Gas shall within 14 days of the date of this Order file a plan providing for the complete repayment of the existing obligations to the Department of Local Government and Columbia Gas.

Done at Frankfort, Kentucky, this 14th day of November, 1994.

By the Commission

Chairman George Edward Overbey, Jr. recused himself in this case. The Chairman sits as a member of the Kentucky Gas System Restoration Review Board, which body has dealt with a number of issues in common with those confronting the PSC in this case.

ATTEST:

Don Mills

Executive Director