

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

COLUMBIA GAS OF KENTUCKY, INC.)	
)	
COMPLAINANT)	
)	
V.)	CASE NO.
)	2009-00340
)	
NATURAL ENERGY UTILITY CORPORATION)	
)	
DEFENDANT)	

ORDER

This matter is before the Commission on the complaint of Columbia Gas of Kentucky, Inc. ("Columbia") against Natural Energy Utility Corporation ("NEUC") alleging that NEUC is attempting to initiate natural gas service to three commercial customers Columbia currently serves without first obtaining a Certificate of Public Convenience and Necessity. The Commission ordered NEUC to satisfy the matter complained of or file a written answer to the complaint. NEUC filed an answer denying the allegations and filed a motion to dismiss the complaint to which Columbia filed a response.

Columbia is a Kentucky corporation that owns and operates facilities that distribute natural gas in central and eastern Kentucky. It has a franchise to serve customers in the city of Ashland, Kentucky through June 30, 2020.

Columbia filed a formal complaint against NEUC alleging that NEUC intends to serve three commercial customers located in a strip mall in Ashland, Kentucky that are currently being served by Columbia. It states that NEUC plans to connect these

customers to a two-inch main constructed for the sole purpose of serving Columbia's Ashland customers. Columbia acknowledges that Kentucky law does not establish exclusive service territories for natural gas utilities, but asserts that NEUC's construction of the two-inch main to serve customers presently served by Columbia represents a wasteful duplication of facilities and thus requires Commission approval pursuant to KRS 278.020. It contends that KRS 278.020 permits construction of utility facilities without Commission approval only if the facilities are ordinary extensions of existing systems in the usual course of business and that the Commission regulation defining ordinary extensions specifically excludes facilities that represent a wasteful duplication. Columbia requests that the Commission issue an Order denying NEUC the right to serve Columbia customers until it has requested and obtained Commission approval.

Columbia also states that the three commercial customers requested termination of service so they could connect to NEUC for gas service. Columbia continues to serve the customers and requests that the Commission grant it a deviation from 807 KAR 5:006, Section 12(1)¹ to allow it to continue to serve the three commercial customers without penalty until this matter is resolved.

¹ 807 KAR 5:006, Section 12(1) provides:

Any customer desiring service terminated or any customer desiring service terminated or changed from one address to another shall give the utility three (3) working days' notice in person, in writing, or by telephone, provided such notice does not violate contractual obligations or tariff provisions. The customer shall not be responsible for charges for service beyond the three (3) day notice period if the customer provides reasonable access to the meter during the notice period. If the customer notifies the utility of his request for termination by telephone, the burden of proof is on the customer to prove that service termination was requested if a dispute arises.

NEUC is a Kentucky corporation that owns and operates facilities that distribute natural gas in Boyd, Carter and Greenup Counties in Kentucky. It also has a franchise to provide natural gas service in the city of Ashland, Kentucky through June 30, 2020.

NEUC filed an answer to Columbia's complaint denying the allegations and moved the Commission for dismissal. NEUC argues that it has had a two-inch pipeline in the area of the strip mall since its predecessor, Kentucky-Ohio Gas Company, began operations in 1992 and that it has served customers on each end of the mall property through this pipeline since that time. NEUC admits that it relocated a portion of this pipeline in June 2007, but denies that it installed new facilities for the purpose of taking Columbia's customers. It asserts that installation of service connections is the only thing required to serve the three commercial customers requesting NEUC service and that the Commission has previously held that the installation of service connections does not represent a wasteful duplication of facilities and, therefore, Commission approval is not required.

In replying to NEUC's motion to dismiss, Columbia asserts that its personnel witnessed NEUC's construction and believes it constructed a new main to serve Columbia customers. It asserts that there is a genuine issue of fact and that NEUC's motion to dismiss should be denied and a procedural schedule established.

Though the parties have already offered several arguments to support their positions, neither has demonstrated that the evidence thus far submitted is sufficient to require dismissal of the complaint in favor of NEUC or to require a finding that NEUC has violated KRS 278.020. We note that no sworn testimony has been filed. Based upon the current record, the Commission is satisfied that Columbia has proffered

sufficient evidence to be permitted to proceed with the prosecution of its complaint against NEUC. Therefore, NEUC's motion to dismiss should be denied and the procedural schedule appended hereto should be followed for the orderly processing of this proceeding.

In addition, the Commission notes that it recently held in Case No. 2004-00018² that "[i]f a conflict or potential conflict exists, it is up to the Commission to decide the issue of which utility may serve, and that can only be resolved in a hearing before the Commission, not by the unilateral action of a utility." Therefore, we find that until the Commission resolves this matter, Columbia should be granted a deviation from 807 KAR 5:006, Section 12(1), and allowed to continue to serve the three commercial customers discussed herein without penalty.

IT IS THEREFORE ORDERED that:

1. NEUC's motion to dismiss is denied.
2. Columbia is granted a deviation from 807 KAR 5:006, Section 12(1) and is authorized to serve the three commercial customers at issue until this proceeding is resolved.
3. The procedural schedule appended hereto shall be followed for the processing of this proceeding.
4. All interrogatories and requests for production of documents shall be appropriately indexed. Responses shall include the name of the individual responsible for responding to the questions related to the information provided.

² Case No. 2004-00018, Sigma Gas Corporation v. B.T.U. Gas Company, Inc. (Ky. PSC Jun. 30, 2009).

5. Service of any document or pleading shall be made in accordance with 807 KAR 5:001, Section 3(7), and Kentucky Civil Rule 5.02.

6. All documents filed with the Commission shall also be served upon all parties of record at or before the time of filing.

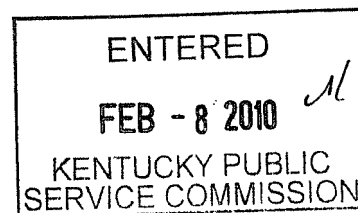
7. All parties shall respond to any interrogatories and request for production of documents that Commission Staff submits in accordance with the procedural schedule set forth in the appendix attached hereto and incorporated herein.

8. Motions for extensions of time with respect to the schedule herein shall be made in writing and will be granted only upon a showing of good cause.

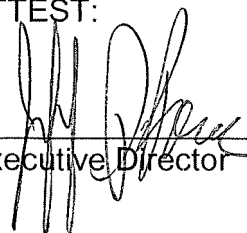
9. At any public hearing in this matter, neither opening statements nor summarization of direct testimony shall be permitted.

10. Nothing contained herein shall prevent the Commission from entering further Orders in this matter.

By the Commission



ATTEST:


Executive Director

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2009-00340 DATED FEB - 8 2010

Each party shall file with the Commission direct testimony
in verified prepared form no later than 2/22/10

Initial requests for production of documents and written
interrogatories shall be filed no later than 3/15/10

Each party shall file responses to the initial requests
for information no later than 3/29/10

Second requests for production of documents and written
interrogatories, if any, shall be filed no later than 4/12/10

Each party shall file responses to the second requests
for information no later than 4/26/10

Public hearing shall begin at 10:00 a.m., Eastern Time,
in Hearing Room 1 of the Commission's offices at
211 Sower Boulevard, Frankfort, Kentucky for the
purpose of cross-examination of witnesses To Be Scheduled

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