

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

COLUMBIA GAS OF KENTUCKY, INC.)	
)	
COMPLAINANT)	
)	CASE NO.
v.)	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 must obtain a Certificate of Public Convenience and Necessity ("CPCN") before it may provide natural gas service to three commercial customers that Columbia currently serves. The Commission disagrees. By this Order we find, as explained herein, that NEUC may provide natural gas service to these three customers without first obtaining a CPCN.

PARTIES TO THE PROCEEDING

Columbia is a Kentucky corporation that owns and operates facilities that distribute natural gas to approximately 102,408 customers in 33 counties in central and eastern Kentucky. Columbia has 10,108 commercial customers, 102 industrial

customers, and two-wholesale customers. The remainder are residential customers.¹ For calendar year 2010, it had total revenues of \$96,493,454.²

NEUC is a Kentucky corporation that owns and operates facilities that distribute natural gas to approximately 917 customers in Boyd, Carter and Greenup counties in Kentucky.³ Of its 917 customers, all but two are residential customers. For calendar year 2010, it had total revenues of \$1,866,648.⁴

As owners and operators of natural gas facilities in Kentucky, both Columbia and NEUC are subject to the Commission's jurisdiction⁵ and they are both authorized to provide natural gas service in Ashland, Kentucky.⁶

PROCEDURE

Upon review of the complaint, 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

¹ Report of Columbia Gas of Kentucky, Inc. to the Public Service Commission of Kentucky for the Year ending December 31, 2010 at 0.

² Id.

³ Report of Natural Energy Utility Corporation to the Public Service Commission of Kentucky for the Year Ending December 31, 2010 at 0.

⁴ Id.

⁵ See KRS 278.010(3)(b).

⁶ NEUC and its predecessor have had a franchise to serve customers within the city limits of Ashland since 1992. The Commission authorized NEUC to bid on a new franchise in Ashland on July 29, 2009 in Case No. 2009-00281 and NEUC entered into its new franchise agreement on September 17, 2009. Columbia has also had a franchise to serve in the city of Ashland for a number of years. It received Commission authorization to bid on a new franchise with the city on July 27, 2009 in Case No. 2009-00278 and entered into a new franchise agreement on November 12, 2009.

filed a response. The Commission denied NEUC's motion, authorized Columbia to continue to serve the customers until final resolution of this matter, and established a procedural schedule that required both parties to file testimony and provided for two rounds of discovery. After completion of the discovery authorized in the initial procedural schedule, the Commission issued an order setting forth a deadline for the parties to file comments or request a hearing. It further established a time for filing reply comments, if any. Both parties filed comments; however, neither party requested a hearing.

STATEMENT OF THE CASE

Columbia currently serves several customers located in a strip mall ("ZTB Property") in Ashland, Kentucky. In July 2009, three of the customers located on the ZTB Property requested that Columbia terminate their gas service so they could initiate service with another natural gas provider. Based upon its belief that NEUC had unlawfully constructed a new two-inch main to serve these customers, Columbia filed a formal complaint against NEUC with this Commission. Columbia requests that we find that NEUC may not serve these customers until it has received Commission approval of a CPCN pursuant to KRS 278.020(1).

Columbia alleges that NEUC constructed a new main within 40 feet of the properties in question and within 10 feet of Columbia's eight-inch steel gas main in August of 2009 for the sole purpose of serving the three ZTB property customers.⁷ It

⁷ Direct Testimony of Russell Dewayne Ryan (Feb. 23, 2010) at 6-7.

also alleges that NEUC inappropriately installed new risers, meter boxes and other facilities within one foot of Columbia's facilities.⁸

Columbia asserts that KRS 278.020 requires a utility to obtain a CPCN before constructing any facility unless the facilities are ordinary extensions of existing systems in the usual course of business. It states that the Commission defined ordinary extension in 807 KAR 5:001, Section 9(3), which provides:

No certificate of public convenience and necessity will be required for extensions that do not create wasteful duplication of plant, equipment, property or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general area in which the utility renders service or contiguous thereto, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

Columbia argues that NEUC's construction does not meet this exemption as it represents a wasteful duplication of Columbia's facilities and conflicts with Columbia's service in the area. It also argues that NEUC was not serving customers in the vicinity of the ZTB property from the line that was relocated and replaced and that any extension thereof would not represent an ordinary extension in the usual course of business.

In support of this argument, Columbia cites three previous Commission cases that involved construction of utility facilities that would directly affect another gas utility's

⁸ Id. at 8.

service.⁹ Columbia points out that the Commission held that the construction in each of the cited cases created a wasteful duplication of plant and conflicted with the service of another utility and as such required a CPCN. Columbia argues that the Commission should make the same finding in this case.

In addition, it asserts that the Commission held that when two utilities have facilities near each other, the utility seeking to extend service must show an element of lack of adequate capacity to serve on the part of the incumbent utility. Columbia stresses that NEUC has failed to make such showing and emphasizes that it is willing and able to continue to provide service to these three customers. It asserts that, not only will it experience a detrimental financial impact from the loss of these customers, but that two of the three customers will be required to pay more for their gas service if switched to NEUC.

NEUC counters Columbia's assertions by admitting that it relocated and replaced a portion of an existing distribution main, but denies that it performed such action to serve Columbia's customers. It argues that it could have served the three customers at issue from the existing distribution main without the relocation and replacement.

NEUC states that, in 2007, a property owner on Bryan Street, near the corner of Palmer and McKinley Streets and the mall property, requested NEUC to relocate its existing gas distribution main to accommodate the property owner's planned

⁹ See Case No. 2004-00018, Sigma Gas Corporation v. B.T.U. Gas Company, Inc. (Ky. PSC Jun. 30, 2009); Case No. 1996-00015, Application of Columbia Gas of Kentucky, Inc. for an Order Issuing a Certificate of Public Convenience and Necessity to the Extent Such a Certificate is Required to Construct a Pipeline to Service Cooper Tire, Inc. in Mt. Sterling, Kentucky (Ky. PSC July 10, 1996); Case No. 2003-00422, Natural Energy Utility Corporation v. Columbia Gas of Kentucky, Inc. (Ky. PSC Sep. 1, 2004).

construction. NEUC states that the property owner then requested that NEUC place the request in abeyance due to delays in his planned construction. The property owner contacted NEUC again in 2009 requesting the relocation. NEUC admits that it moved a two-inch gas distribution main approximately 75 feet to place it out of the property owner's planned construction site. NEUC decided that it was prudent to replace some of its existing steel pipeline with plastic pipe at the same time. Therefore, during the relocation process, NEUC replaced approximately 100 feet of two-inch steel pipe and 580 feet of four-inch steel pipe with similar sized plastic pipe.¹⁰ NEUC acknowledges that it has installed service connections to serve the three customers, but argues that the relocation and installation of the connections do not require a CPCN.

NEUC argues that its replacement and relocation of an existing distribution line that transverses the ZTB Property cannot be considered a violation of any aspect of 807 KAR 5:001, Section 9(3). It argues that the Commission should find as it did in Case No. 1999-00489¹¹ that the only duplication of facilities is the service connections required to serve the three customers and that the service connections do not require a CPCN.

DISCUSSION

The issue before the Commission is whether NEUC's relocation and replacement of its existing distribution main and/or its construction of service connections required a

¹⁰ Direct Testimony of H. Jay Freeman (February 23, 2010) at 5.

¹¹ Case No. 1992-00489, Columbia Gas of Kentucky, Inc. v. Kentucky-Ohio Gas Company (Ky. PSC Jul. 2, 1993).

CPCN. In reviewing this issue, we have considered all of the facts presented as well as all of the cases cited by the parties.

We recognize that we have previously found that, while Kentucky law does not establish exclusive service territories for natural gas utilities, such utilities have general service areas and that another utility's extension into that area cannot be considered an extension in the ordinary course. However, the present case is distinguishable from the cases in which we made such findings as well as others cited by Columbia. Those cases involved utilities actually having to make extensions to provide service to the prospective customers. In Case No. 1996-00015, Columbia proposed to build a two-mile extension of a six-inch main, a portion of which would parallel Delta Natural Gas Company's existing line, in order to serve the Cooper Tire and Rubber Company. The Commission not only held that the line did not meet the ordinary course exemption, but also that since there would be a wasteful duplication of Delta's facilities, which Columbia had not shown were inadequate, there was not a proper showing of public convenience and necessity for the extension. In NEUC's complaint case against Columbia, Case No. 2003-00422, the Commission held that a 1,200-foot gas main extension would be required for Columbia to serve the NEUC customer, that such extension did not meet the ordinary course exemption, and that a CPCN was required. Since the issue of awarding a CPCN was not before the Commission in that case, it did not decide that issue. In *Sigma Gas Corporation v. B.T.U. Corporation*, Case No. 2004-00018, the Commission found that BTU had completed extensions to serve several customers, which did not meet the ordinary course exemption, and ordered it to cease providing service.

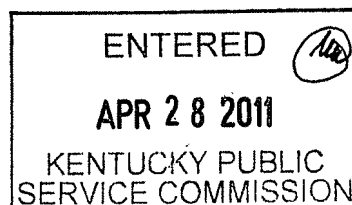
The previous case most closely on point with the present case is Case No. 1992-489. Columbia and Kentucky-Ohio Gas Company ("Kentucky-Ohio") both had facilities immediately adjacent to the customer's property line and each utility's ability to serve the customer was approximately equal. The customer was being served by Columbia but could, by merely constructing its service line to a different point of service, readily obtain the desired service from Kentucky-Ohio. The customer requested service from Kentucky-Ohio and the service connections were made. The Commission ruled that there was no duplication of facilities other than the service connections and that a CPCN was not required. This same situation is presented in the present case. Columbia and NEUC both have facilities immediately adjacent to the customers' properties, albeit NEUC's are closer due to the relocation of an existing line, which we find did not require a CPCN. Both companies are capable of serving the customers, NEUC is not required to construct an extension to serve the customers and the only duplication of facilities is the necessary service connections.

IT IS THEREFORE ORDERED that Columbia's request that NEUC be required to obtain a CPCN to serve the three customers on the ZTB Property is denied and this case is closed and removed from the Commission's docket.

By the Commission

ATTEST:


Executive Director



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