

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF NATURAL GAS OF KENTUCKY)	
FOR APPROVAL OF CONSTRUCTION OF AN)	CASE NO.
INTRASTATE NATURAL GAS PIPELINE, ISSUANCE)	2014-00257
OF A CERTIFICATE OF CONVENIENCE AND)	
NECESSITY, AND APPROVAL OF FINANCING)	

ORDER

On July 18, 2014, Natural Gas of Kentucky, Inc. ("Natural Gas") tendered an application for a Certificate of Public Convenience and Necessity ("CPCN"), pursuant to KRS 278.020 and 807 KAR 5:001, for the construction of a new 6-inch pipeline to transport natural gas from an interconnection with Louisville Gas & Electric's ("LG&E") Flint Hill pipeline, approximately 2.3 miles northwest of Sonora, Kentucky, to the asphalt plant of Scotty's Contracting and Stone, LLC ("Scotty's") Upton Quarry located three-fourths of a mile south of Upton in Hardin County, Kentucky ("Project"). Natural Gas was notified, by letter dated July 25, 2014, that its application was deficient in that it did not comply with the provisions of 807 KAR 5:001, Sections 15(2)(d)(2) and 18(2)(c), and KRS 322.340. On August 15, 2014, Natural Gas cured the deficiencies, and by letter dated August 20, 2014, the Commission accepted the application for filing as of August 15, 2014. There were no requests for intervention.

On September 10, 2014, Commission Staff ("Staff") met with representatives of Natural Gas in an informal conference in order to clarify information provided in the application. This informal conference was memorialized in an intra-agency memorandum, filed by Staff on September 15, 2014, in which Natural Gas agreed to

notify the Commission when it has secured the remaining easements.¹ On September 17, 2014, Natural Gas filed a response to the intra-agency memorandum that included the status of the necessary easements.² The matter now stands submitted for a decision. For the reasons stated below, the Commission will grant Natural Gas's request for a CPCN. The Project as described by Natural Gas is self-funded and no approval of financing is required.

BACKGROUND

Natural Gas is a Kentucky corporation with its principal place of business in Anchorage, Kentucky.³ It is an intrastate natural gas pipeline company and, pursuant to KRS 278.010(3), is a utility regulated by the Commission. It owns and operates approximately 24 miles of pipeline serving six intrastate transportation customers in Allen, Barren, Hart, Logan, Ohio, and Metcalfe counties. It also serves Bluegrass Gas Sales, Inc. ("Bluegrass Gas"), a jurisdictional Local Distribution Company, which is a Natural Gas affiliate pursuant to KRS 278.010(18).

With its application and subject to a request for confidentiality, Natural Gas filed a Transportation Agreement ("Agreement") with Scotty's to construct the pipeline for the Project in exchange for Scotty's commitment to make a non-refundable financial contribution and to pay a fixed transportation fee pursuant to the terms of the Agreement. According to Natural Gas, it will incur no debt or other obligations in

¹ Letter from Jeff Derouen, Executive Director, Kentucky Public Service Commission (Sept. 15, 2014).

² Letter from John N. Hughes, Attorney for Natural Gas of Kentucky, to Jeff Derouen, Executive Director, Kentucky Public Service Commission (Sept. 17, 2014).

³ Application at 1.

connection with this project, and rates to its other customers will not be affected. Natural Gas states that it has a contract with LG&E for the interconnection of its facilities for the transportation of gas to Scotty's.⁴ Natural Gas stated at the informal conference that the contract includes a Limited Waiver of Prohibition of Resale of Gas which waives resale of gas from the LG&E connection for up to 15 customers along the proposed pipeline, and that any customers so connected will be served by Bluegrass Gas pursuant to its tariff. Natural Gas states that there has been no opposition to the Project, that it has personally contacted every property owner over whose land the proposed pipeline will cross, and that no property owner refused to sign an easement.⁵ In its response to Staff's informal conference memorandum, Natural Gas filed an easement map with a corresponding list of all affected properties, along with a statement that only a few property owners have indicated a desire for natural gas service from the pipeline and none have written applications for service.⁶

ANALYSIS

Natural Gas provided maps, drawings, plans and technical specifications certified by Kenvirons, Inc. of Frankfort, Kentucky, with its application and stated that Natural Gas employees certified Operator Qualified would be constructing the project. As stated in the Agreement, Natural Gas is required to provide Scotty's with a minimum pressure of 6 pounds per square inch (psi). The calculations completed by Kenvirons,

⁴ Application at 8.

⁵ Letter from Jeff Derouen, Executive Director, Kentucky Public Service Commission (Sept. 15, 2014).

⁶ Letter from John N. Hughes, Attorney for Natural Gas of Kentucky, Inc., to Jeff Derouen, Executive Director, Public Service Commission (Sept. 17, 2014).

Inc. indicate that 100 MCF/hour can be provided by the 6-inch main with a residual pressure of 57 psi.

The project includes the construction of approximately 7.5 miles of 6-inch polyethylene gas main, meeting requirements of Title 49 CFR Part 192 and 807 KAR 5:022, from the interconnection with LG&E's Flint Hill pipeline, approximately 2.3 miles northwest of Sonora, Kentucky, to the asphalt plant of Scotty's Upton Quarry located three-fourths of a mile south of Upton in Hardin County, Kentucky. In its response to Staff's informal conference memorandum, Natural Gas stated that all necessary easements have been signed except for three, which have been agreed to and are being formalized.⁷ Natural Gas will be the owner and operator of the pipeline upon its completion.

The Agreement pursuant to which Natural Gas will deliver gas to Scotty's provides for an initial term with automatic renewals; the price to be paid to Natural Gas for transportation on the pipeline to be constructed and for repayment of all fees, costs, and charges for natural gas supplies and transportation for and to Scotty's; and for the manner in which Scotty's will otherwise provide funding for the Project.

LEGAL STANDARDS

Natural Gas's request for approval of the Project, including its construction of a new pipeline, is pursuant to KRS 278.020(1), which provides, in relevant part, that:

No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any services enumerated in KRS 278.010 . . . until that

⁷ Letter from John N. Hughes, Attorney for Natural Gas of Kentucky, Inc., to Jeff Derouen, Executive Director, Public Service Commission (Sept. 17, 2014).

person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.

807 KAR 5:001, Section 15(2), provides in part:

New construction or extension. Upon application for a certificate that the present or future public convenience or necessity requires, or will require, the construction or extension of any plant, equipment, property, or facility, the applicant, in addition to complying with Section 14 of this administrative regulation, shall submit with its application:

(a) The facts relied upon to show that the proposed construction or extension is or will be required by public convenience or necessity[.]

To obtain a CPCN, the utility must demonstrate a need for such facilities and an absence of wasteful duplication.⁸

“Need” requires:

[a] showing of a substantial inadequacy of existing service involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed and operated.

...

The inadequacy must be due either to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business; or to indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service.⁹

“Wasteful duplication” is defined as “an excess of capacity over need” and “an excessive investment in relation to productivity or efficiency, and an unnecessary

⁸ Kentucky Utilities Co. v. Pub. Serv. Comm’n, 252 S.W.2d 885 (Ky. 1952).

⁹ *Id.* at 890.

multiplicity of physical properties.”¹⁰ To demonstrate that a proposed facility does not result in wasteful duplication, we have held that the applicant must demonstrate that a thorough review of all alternatives has been performed.¹¹ Selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.¹²

The Commission finds that Natural Gas’s request for a CPCN for construction of the Project as described in its Application does not duplicate any existing facilities and is necessary in order for Natural Gas to have the ability to transport and sell natural gas to Scotty’s for its asphalt plant. Based upon the record and being otherwise sufficiently advised, the Commission finds that a CPCN for construction of the pipeline should be approved and that, no later than 90 days after the completion of the project, Natural Gas should file with the Commission a statement of the actual costs of the construction.

IT IS THEREFORE ORDERED that:

1. Natural Gas is granted a CPCN for construction of the Project set forth in the application.
2. The Transportation Agreement between Natural Gas and Scotty’s is reasonable and is approved.

¹⁰ *Id.*

¹¹ Case No. 2005-00142, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky* (Ky. PSC Sept. 8, 2005).

¹² See *Kentucky Utilities Co. v. Pub. Serv. Comm’n*, 390 S.W.2d, 175 (Ky. 1965). See also Case No. 2005-00089, *The Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity to Construct a 138 kV Transmission Line in Rowan County, Kentucky* (Ky. PSC Aug. 19, 2005).

3. Natural Gas shall, no later than 90 days after the completion of the project, file with the Commission a statement of the actual costs of the construction.

4. Natural Gas shall file a copy of the "as-built" drawings and a certified statement from the engineer that the construction has been satisfactorily completed in accordance with the contract plans and specifications within 60 days of substantial completion of the construction certified herein.

5. Natural Gas shall require the construction to be inspected under the general supervision of a professional engineer licensed to practice in the Commonwealth of Kentucky in civil or mechanical engineering to ensure that the construction work is done in accordance with the contract drawings and specifications and in conformance with the best practices of the construction trades involved in the project.

6. Natural Gas shall notify the Commission one week prior to the actual start of construction and at the 50 percent completion point.

7. Natural Gas shall not incur any long-term indebtedness associated with this project without applying to the Commission for approval pursuant to KRS 278.300.

8. Any documents filed pursuant to ordering paragraphs 3, 4, and 6 of this Order shall reference the number of this case and shall be retained in the utility's post-case reference file.

By the Commission

ENTERED
OCT 02 2014
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2014-00257

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