

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE FILING OF A SPECIAL CONTRACT BY) CASE NO.
NATURAL ENERGY UTILITY CORPORATION) 2018-00164

ORDER

On May 1, 2018, pursuant to 807 KAR 5:011, Section 13, Natural Energy Utility Corporation (NEUC) filed with the Commission a Gas Service Agreement (Agreement) with a new industrial customer and requested Commission approval of the Agreement. The Commission issued an Order on May 30, 2018, indicating that further proceedings were necessary to determine the reasonableness of the Agreement. Pursuant to KRS 278.190(2), the May 30, 2018 Order also suspended the effective date of the Agreement for five months up to and including October 31, 2018. In order to facilitate the review, the Commission issued a procedural schedule on June 7, 2018.

Columbia Gas of Kentucky (Columbia Kentucky) filed a Motion to Intervene on June 15, 2018, and NEUC submitted a response objecting to the intervention request on June 20, 2018. Based upon the factual representations made by NEUC in its response, Columbia Kentucky filed a Motion to Withdraw Motion for Intervention (Motion to Withdraw) without prejudice on June 27, 2018.

BACKGROUND

NEUC is a Kentucky corporation with its principal place of business located in Ashland, Kentucky that distributes and sells natural gas in Boyd, Greenup, and Carter

counties in Kentucky.¹ Pursuant to KRS 278.010(3)(b), NEUC is a utility regulated with the Commission. According to the Agreement, all of the natural gas pipelines and facilities necessary to serve the new industrial customer are currently in place; however, due to the volume of gas that the customer will potentially require and the necessary relocation of a delivery point, NEUC will need to install and upgrade certain facilities to accommodate the increased volumes.² NEUC requests confidential treatment of the identity of the customer, contract rates and terms and conditions of service, a map of the proposed project, and certain other information contained in the Agreement.³

DISCUSSION AND FINDINGS

In support of the Agreement, NEUC states that the new industrial customer will pay for 100 percent of the proposed project.⁴ NEUC further contends that the rates to its other customers will not be affected because the special contract rate will cover all variable costs and contribute to fixed costs.⁵ While the Commission cannot divulge the confidential terms of the Agreement, NEUC has submitted information demonstrating that the Agreement and associated rates and terms as proposed: (1) cover the cost of the proposed project as well as the on-going costs to serve the customer; (2) do not adversely impact the rates of other customers; and (3) will enable gas service to be provided to a

¹ *Annual Report of Natural Energy Utility Corporation to the Public Service Commission for the Year Ended December 31, 2017*, at 4.

² NEUC's Special Contract (filed May 1, 2018); NEUC's Response to Commission Staff's First Request for Information (Staff's First Request), (filed June 27, 2018), Item 1(a).

³ TFS No. 2018-00207 (Ky. PSC filed May 1, 2018). Pursuant to 807 KAR 5:001, Section 13(3)(c), the Commission issued a letter approving NEUC's Petition for Confidentiality on June 8, 2018.

⁴ NEUC's Response to Staff's First Request, Item 1(d).

⁵ NEUC's Response to Staff's First Request, Item 2.

new industrial customer that is located upon property that was formerly occupied by an NEUC customer.

NEUC asserts in its cover letter that a certificate of public convenience and necessity (CPCN) is not required for the proposed project associated with the Agreement, and therefore NEUC did not file an application for a CPCN or request a declaratory order finding that a CPCN is not required. NEUC further states that if the associated construction does, in fact, require a CPCN then to please advise of the same.

Based on NEUC's filing and being otherwise sufficiently advised, the Commission finds that filing a cover letter asking to be advised if a project requires a CPCN is not proper procedure, and should not be repeated, as it does not formally place the CPCN issue before the Commission for a ruling. In future filings, if NEUC desires to obtain a ruling from the Commission as to whether a CPCN is required for a specific project, then NEUC should formally present such issue to the Commission for our consideration and determination by filing a request for a declaratory order or an application for a CPCN. Even though the CPCN issue is not properly before the Commission, due to the fact that the proposed project is an integral part of the Agreement with the new customer, and sufficient information has been obtained to render a ruling, we will do so in order to achieve efficiency and avoid a delay in NEUC's service to a new customer.

KRS 278.020(1) provides in relevant part:

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 of the services enumerated in KRS 278.010, except . . . ordinary extensions of existing systems in the usual course of business . . . until that person has obtained from the Public

Service Commission a certificate that public convenience and necessity require the service or construction.

An extension in the ordinary course of business is defined by 807 KAR 5:001

Section 15(3) as:

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 or contiguous area in which the utility renders service, 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.

NEUC argues that the proposed project associated with the Agreement falls within the extension in the ordinary course of business exception due to the following: (1) based upon the terms of the Agreement there will be no financial impact on current operations of the company;⁶ (2) the new industrial customer will pay for 100 percent of the proposed project so there will be no impact on NEUC's debt;⁷ (3) the project will constitute less than 1 percent of NEUC's current plant in service;⁸ (4) there will be no increase in charges to NEUC's other customers;⁹ and (5) the project will not compete with the facilities of existing public utilities because NEUC has served customers on the subject property since 1987.¹⁰

⁶ NEUC's Response to Staff's First Request, Item 5.

⁷ NEUC's Response to Staff's First Request, Item 1(d).

⁸ NEUC's Response to Staff's First Request, Item 5.

⁹ *Id.*

¹⁰ *Id.*

In assessing whether a proposed project is a system extension in the ordinary course of business, Kentucky courts have traditionally looked to the size and scope of a project in the context of the monetary cost involved. The Commission has similarly adopted this method and likewise looks to the scale of a proposed project in relation to the relative size of the utility and its present facilities. The proposed method of financing a project is not necessarily determinative of whether a project requires a CPCN, and the Commission also looks to whether the facilities would result in wasteful duplication, compete with existing facilities, or involve sufficient capital to affect the utility's financial condition materially.

Pursuant to the Agreement, the new industrial customer will pay 100 percent of the proposed construction project costs. The Uniform System of Accounts requires customer contributions to be recorded as a credit to the cost of construction of the gas plant, so the plant construction funded by those contributions will not be recovered from NEUC's other customers.¹¹ Therefore, the proposed project will not materially affect the utility's existing financial condition and will not require an adjustment of its rates. Further, the associated project would not result in wasteful duplication or compete with existing facilities since NEUC has exclusively served customers on the subject property since 1987. Consequently, the proposed construction is an improvement to its existing system that may properly be considered an extension in the ordinary course of business.

Having reviewed the evidentiary record and being otherwise sufficiently advised, the Commission finds that the Agreement should be approved and that based upon the

¹¹ Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act, Gas Plant Instructions, 2. *Gas plant to be recorded at cost, D.*

information provided by NEUC, the associated project constitutes an extension in the ordinary course of business, and therefore, does not require prior CPCN approval.

IT IS THEREFORE ORDERED that:

1. NEUC's Agreement is approved as filed.
2. Columbia Kentucky's Motion to Withdraw is granted.

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By the Commission



ATTEST:

A handwritten signature in blue ink that reads "Steve R. Punsio". The signature is written in a cursive style.

Executive Director

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