

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ADJUSTMENT OF THE )  
RATES OF DELTA NATURAL )  
GAS COMPANY, INC. )

Case No. 2004-00067

RECEIVED

DEC 03 2004

PUBLIC SERVICE  
COMMISSION

MOTION FOR REHEARING AND/OR CLARIFICATION

The AG has asked that if an expense for the voluntary support of the Gas Technology

Research Institute be imposed, it be collected through base rates. On November 10, 2004, the

Commission entered an Order that, among other things, states at page 59:

The Commission agrees with Delta's proposal to recover monies to voluntarily fund GTI research through a tariff rider....Allowing recovery via a rider is consistent with Commission decisions for two other gas utilities, Atmos Energy and Columbia Gas of Kentucky. The Commission finds that collection the contribution through a rider, rather than base rates, is reasonable.

Stating that allowing recovery of the expense through a rider is consistent with two other cases and that the collection of the contribution through a rider is reasonable seems to imply that the two other cases mentioned are acting as precedent supporting the collection of the expense through a rider. Both of the cases mentioned were cases in which the parties submitted a unanimous settlement to the Commission for its approval.<sup>1</sup> Both cases contained provisions in those settlements that recommendation and terms of the settlement are to be used only for that case and are not to be offered or relied upon in any other proceeding.<sup>2</sup> That provision is an important provision in hard fought settlements where each item in the settlement is a quid pro

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<sup>1</sup> See, *In the Matter of: Adjustment of Rates of Columbia Gas of Kentucky, Inc.*, Case No. 2002-00145, Order of December 13, 2002, and *In the Matter of: Application of Western Kentucky Gas Company for an Adjustment of Rates*, Case No. 99-070, Order of December 21, 1999.

<sup>2</sup> See, numeric paragraph 11 of the Joint Stipulation and Recommendation of the Parties to Case No. 2002-00145 pertaining to Columbia Gas and numeric paragraph \_\_\_\_ of the Joint Stipulation and Recommendation of the Parties to Case No. 99-070.

quo for each and all other items. To take any given provision of a settled case out of context as grounds for action in another case ignores that provision and leaves parties to settlements even more reluctant than they already are to ever enter into settlements that include any terms they do not wish to see held out as precedent in other matters. It is not appropriate to look to those cases as establishing a precedent of any sort.<sup>3</sup> Doing so casts a chilling effect on the settlement process. Therefore the AG asks the Commission to clarify whether it was relying on those cases as precedent, and if so, to reconsider that reliance.

Furthermore, collection of a single expense through a separate tariff outside of base rates makes the ratepayers solely responsible for that given expense and leaves none of the risk of responsibility for the expense in periods of lesser earnings on the utility. Collection of a single expense outside of general rates is an extraordinary measure. The AG asks the Commission to reconsider whether this expense is meritorious of extraordinary treatment, and again argues that it is not.

Respectfully submitted,

Gregory D. Stumbo  
Attorney General



Elizabeth E. Blackford  
Assistant Attorney General  
1024 Capital Center Drive, Suite 200  
Frankfort, Kentucky 40601-8204  
(502) 696-5453

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<sup>3</sup> In Case No. 3003-00317, *In the Matter of: The Joint Petition of Kentucky-American water Company, Thames Water Aqua Holdings GmbH, RWE Aktiengesellschaft, Thames Water Aqua Holdings, Inc., Apollo Acquisition Company and American Water Works Company, In.l for Approval of a Change of Control of Kentucky-American Water Company*, the Commission recognized the fact that settlements are to be viewed as an integrated whole, the individual provisions of which are not to be taken out of context without consideration of the contents of the entire agreement or the circumstances of the parties. See, Order dated December 20, 2002, p. 24

NOTICE OF FILING AND CERTIFICATION OF SERVICE

I hereby give notice that I have filed the original and ten true copies of the foregoing with the Executive Director of the Kentucky Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky 40601, this the 3rd day of December, 2004, and certify that this same day I have served the parties by mailing a true copy, postage prepaid, to the following:

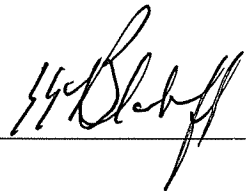
JOHN F HALL  
VICE PRESIDENT FINANCE  
DELTA NATURAL GAS COMPANY INC  
3617 LEXINGTON ROAD  
WINCHESTER KY 40391

ROBERT M WATT III ESQ  
STOLL KEENON & PARK LLP  
300 WEST VINE STREET  
SUITE 2100  
LEXINGTON KY 40507-1801

LESLYE M BOWMAN  
DIRECTOR OF LITIGATION  
LFUCG DEPARTMENT OF LAW  
200 EAST MAIN STREET  
LEXINGTON KY 40507

MARIAN CARPENTER  
DELTA NATURAL GAS COMPANY INC  
3617 LEXINGTON ROAD  
WINCHESTER KY 40391

CONNIE KING  
DIRECTOR RATES & TREASURY  
DELTA NATURAL GAS COMPANY INC  
3617 LEXINGTON ROAD  
WINCHESTER KY 40391



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