

COMMONWEALTH OF KENTUCKY
BEFORE THE ENERGY REGULATORY COMMISSION

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In the Matter of:

THE LOCAL TAXES AND/OR FEES)
TARIFF FILING OF COLUMBIA) CASE NO. 7906
GAS OF KENTUCKY, INC.)

O R D E R

On July 3, 1980, Columbia Gas of Kentucky, Inc. made a tariff filing with the Commission, wherein it proposed new and revised general rules and regulations concerning customer billing for certain local taxes and/or fees that might be levied or imposed upon the Company to be effective on and after the date of Commission approval. In order to determine the reasonableness of the proposed tariff, the Commission by Order dated July 9, 1980, suspended the proposed tariff for a period of five (5) months on and after the date of the Commission's suspension Order and set the matter for hearing on August 1, 1980.

The hearing was held as scheduled and the motions of the Lexington-Fayette Urban Government and the Attorney General's Division of Consumer Intervention to intervene were sustained. A deposition of Joseph E. Mainous, witness for the Lexington-Fayette Urban County Government, was taken on July 25, 1980, in the Municipal Building in Lexington, Kentucky, and treated as pre-filed testimony on behalf of the Lexington-Fayette Urban Government, and a second hearing was held in the Commission's Offices in Frankfort, Kentucky on August 21, 1980. On both occasions all parties of interest were given the opportunity to participate.

All briefs were filed with the Commission by September 5, 1980. The entire record, including responses to requests for additional information was then submitted to the Commission for final determination.

1. The only issue to be decided is how a franchise fee or tax shall be recovered by the utility: whether as a separate item on the bills of customers receiving service in the territory of a municipality requiring such a fee or tax, or as an operating expense of the utility to be recovered from all customers. Sections 163 and 164 of the Kentucky Constitution clearly allow a municipality to require a franchise agreement, and further specify that the municipality may receive bids for such franchise. KRS 96.010 provides that the franchise agreement must be fair and reasonable to the municipality, to the purchasers of the franchise, and to the patrons of the utility.

2. Increased consumption of gas within a franchise area will increase the payment due the municipality. Energy consumption outside the franchise area does not change the amount of the franchise fee. Conservation by customers outside the franchise area would not lessen this expense.

3. Based upon the evidence adduced at the hearings, and being advised, the Commission is of the opinion and finds that it is unfair to the customers not residing within a municipality to be required to pay part of the costs of a utility's franchise agreement with a municipality. Accordingly, tariff provisions which perpetuate such an arrangement are unfair, unjust and unreasonable.

4. Since there is no limitation on the amount of franchise fee which may be required, the Commission further finds that a uniform system should be adopted to recover these costs fairly with respect to the entire customer body. The fairest and best way to accomplish this is to recover franchise fees as a separate item on the bills of customers receiving service within a municipality requiring such a fee. Customers living within a franchise area are entitled to know the amount of the fee. The utility merely acts as the conduit by which taxpayers are assessed a franchise fee which the utility then passes on to the municipality.

5. Such itemization is further justified by the fact that this charge is not regarded by the Commission as an ordinary expense

of the utility. Consumers have a right to know the amount of such charges collected from them for government operating expenses. The matter of the amount of such franchises is basically between the citizens within the franchise area and their local government, but its inclusion in a utility bill and the treatment of the charge for rate making purposes is a Commission matter. Franchise fees have become contagious as cities have looked for new ways to raise needed revenues. Basic fairness dictates that these revenues be raised in the area in which they are spent, and that customers are aware of this in the same manner as the school tax is presented on the customer bill. KRS 160.613 allows school districts to impose a 3% utility tax to be paid by affected subscribers; the recovery of franchise fees or taxes via a separate item on affected customers' bills would thus be a logical extension of this legislation.

6. The Commission finds no justification in hiding this charge from the consumer or treating these franchises as ordinary utility expenses.

7. For all of the reasons set forth above, the Commission hereby FINDS that Applicant's proposed tariff is fair, just, and reasonable, in the public interest, and should be approved.

IT IS THEREFORE ORDERED that the local government franchise fees or taxes shall be listed as a separate item on the consumers' bills from which the fee is derived, showing the amount and designating the unit of government to which the fee is payable.

IT IS FURTHER ORDERED that the tariff filing of Columbia Gas of Kentucky, Inc., relative to the recovery of franchise fees or taxes, be and it hereby is approved, effective with the date of this Order. The page of the tariff filing hereby approved is:

Local Franchise Fee or Tax

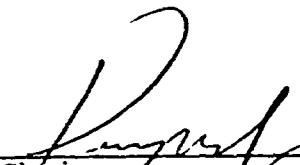
Applicable to All Rate Schedules

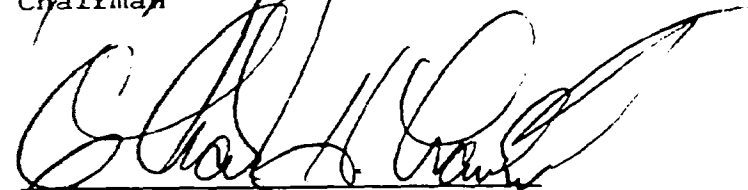
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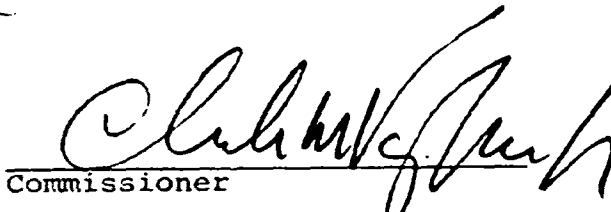
IT IS FURTHER ORDERED that within twenty (20) days from the date of this Order Columbia Gas of Kentucky, Inc., shall file revised tariff sheets with the Commission stating the regulations herein approved.

Done at Frankfort, Kentucky, this 10th day of October, 1980.

ENERGY REGULATORY COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary