

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE)	
REASONABLENESS OF THE RATES)	CASE NO.
OF PAN BOWL PRODUCTION)	9206
COMPANY TO PUBLIC GAS COMPANY)	

ORDER DENYING MOTION TO DISMISS

On December 5, 1984, Pan Bowl Production Company ("Pan Bowl") filed a motion to dismiss this proceeding asserting two grounds in support thereof. First, Pan Bowl alleges that it does not own any stock in Public Gas Company ("Public") and, therefore, should not be considered an affiliated company as contemplated by KRS 278.274. This argument has no merit. Pan Bowl is controlled by Edsel McCoun. Pan Bowl concedes that Edsel McCoun and his children (through PATS Service Company) own a controlling share (or have effective control) of Public. (Motion, p. 1.) KRS 278.274(3)(a) states as follows:

(a) For purposes of this subsection, affiliated companies shall be defined as those in which one (1) or more of the owners control or have the right to control the business affairs of all affected companies.

Evidence of record before this Commission clearly establishes that Edsel McCoun owns a controlling interest in Pan Bowl and

that he and his family also have effective control over Public.¹ Accordingly, Pan Bowl and Public are affiliated companies as contemplated by KRS 278.274.

Pan Bowl's second argument is that the Commission cannot examine the gas purchasing practices of Public in a PGA proceeding but must, instead, do so only in a general rate proceeding. However, nothing in KRS 278.274 supports this proposition. That statutory provision states as follows:

In determining whether proposed natural gas utility rates are just and reasonable, the Commission shall review the utility's gas purchasing practices. The Commission may disallow any costs or rates which are deemed to result from imprudent purchasing practices on the part of the utility. (Emphasis supplied.)

This says nothing about a "general rate proceeding." Indeed, Kentucky does not even have a statutory provision for "PGA filings." A PGA Order issued by this Commission always determines a new "fair, just and reasonable" rate to be charged henceforth by the gas utility. A company seeking to raise its rates through the PGA procedure must still give 20 days notice to the Commission as required in any other type of rate adjustment. The Commission may or may not then suspend the effective date and enter into evidentiary hearings before ruling on the justness and reasonableness of the PGA filing. A PGA filing is thus clearly a "[determination as to] whether proposed natural gas utility rates

¹ Transcript of Evidence, August 17, 1981, hearing, Case No. 8186, "Notice of Adjustment in Natural Gas Rates of the Public Gas Company."

are just and reasonable" as contemplated by KRS 278.274. Moreover, the reviewing courts in Kentucky have never made any distinction between a PGA rate Order and a general rate Order.²

Finally, Pan Bowl asserts that the Commission has "acknowledged" that Pan Bowl is not a utility by reason of the Commission's dismissal of a previous case against it in docket number 8780. The Order dismissing Case No. 8780 made no finding on whether Pan Bowl was or was not a utility. It simply stated that there was no reason to continue that case in view of the new proceeding under KRS 278.274 which will accomplish the same purpose - determine whether the rate Pan Bowl now charges its affiliated distribution company is fair, just and reasonable.

IT IS THEREFORE ORDERED that Pan Bowl's motion to dismiss this proceeding be and it hereby is denied.

IT IS FURTHER ORDERED that Pan Bowl shall file the information requested in the Order issued November 16, 1984, on or before January 11, 1985.

² Mike Little Gas Company, Inc. v. Public Service Commission, Ky. App., 574 S.W.2d 926 (1978).

Done at Frankfort, Kentucky, this 20th day of December, 1984.

PUBLIC SERVICE COMMISSION

Richard D. Hemmings
Chairman

W. C. Logan
Vice Chairman

Sam Shuck
Commissioner

ATTEST:

Secretary