

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ADJUSTMENT OF THE RATES OF)
AUXIER ROAD GAS COMPANY, INC.,) CASE NO. 9318
FOR AN INCREASE IN GAS RATES)

O R D E R

On January 31, 1986, the Commission issued an Order granting Auxier Road Gas Company ("Auxier Road") a rehearing on three issues adjudicated in the December 20, 1985, Order authorizing an adjustment in gas rates. The issues pending on rehearing are (1) the denial of Auxier Road's motion to shift the burden of proof to intervenors and the Commission; (2) the disallowance for rate-making purposes of all expenses associated with the Cliff Transmission Line; and (3) the disallowance for rate-making purposes of Auxier Road's legal expenses for its participation before the Commission in a general rate adjustment filed by Auxier Road's wholesale supplier, Columbia Gas of Kentucky. An additional issue, present in both this case and the pending rehearing of Auxier Road's Purchased Gas Adjustment Filing, Case No. 9318-A, is Auxier Road's billing of rates in excess of those approved by the Commission in its Order issued December 20, 1985.

A hearing was held on March 21, 1986, at the Commission's offices in Frankfort, Kentucky. The Attorney General's Office, Division of Consumer Protection, ("AG") was the only intervenor to participate in the hearing. The case was submitted to the

Commission subsequent to the receipt of briefs from Auxier Road and the AG.

BURDEN OF PROOF

Auxier Road claims on rehearing that the Commission erred in imposing on Auxier Road the burden to prove that its present rates are just and reasonable. Auxier Road's present rates were proposed in a general adjustment of rates filed on March 29, 1985. The proposed rates had an effective date of April 19, 1985, and they became effective by operation of law on that date. See KRS 278.180. By Order entered May 13, 1985, the Commission, on its own motion, invoked its authority pursuant to KRS 278.190(1) to investigate the reasonableness of Auxier Road's new rates. This investigatory authority was later supplemented by the Commission's decision, entered June 6, 1985, to invoke its supplemental authority under KRS 278.260 to investigate rates.

Auxier Road's first argument is that the Commission's purpose in initiating a complaint investigation under KRS 278.260 was to determine whether Auxier Road's rates are unreasonable and, until a finding of unreasonableness is made, the rates are presumed to be reasonable since they are the lawful, effective rates. With such a presumption, the burden of proof shifts to those challenging the reasonableness of the rates. The AG disagrees with this position, arguing that no such presumption exists absence an explicit Commission Order approving the rates. The AG further argues that in a rate proceeding the Commission is acting

in a quasi-judicial manner as the trier of fact. In such circumstances, neither the Commission or its staff is required to meet any burden of proof.

The Commission rejects Auxier Road's argument for two reasons. First, although Auxier Road's present rates are lawful and effective, they were not approved by the Commission and, therefore, not entitled to any presumption as to reasonableness. Second, this investigation was initiated under KRS 278.190 which mandates that the utility bear the burden of proof to show that the rates are just and reasonable. See KRS 278.190(3).

Auxier Road's second argument is that the Commission's approval of Auxier Road's tariff sheets, without any protest or objection, constituted a finding that the rates were reasonable. Auxier Road further argues that based on this presumptive finding, the Commission's investigative authority under KRS 278.190 is terminated, leaving only a KRS 278.260 complaint proceeding in which intervenors or the Commission's staff must demonstrate that the rates are unreasonable. Auxier Road cites KRS 278.430 as controlling authority to place the burden of proof on intervenors or Commission staff.

The Commission finds this argument unpersuasive. When a utility proposes new rates, they can become effective either upon approval by the Commission or automatically upon the expiration of the statutory review period. Rates which have become effective by this later method have never been approved by the Commission and are, consequently, not entitled to any presumption as to their justness and reasonableness. Further, the approval, by a

Commission staff member, of a utility's tariff sheets is a ministerial act indicating that their form and content conforms with the utility's effective rates. The Commission has no authority to grant or deny approval for new rates other than by issuing a written order.

The Commission finds no merit in Auxier Road's argument to invoke KRS 278.430. That statute provides, in pertinent part, that "the party seeking to set aside any determination, requirement, direction or order of the commission shall have the burden of proof..." KRS 278.430. This statute establishes the burden of proof in proceedings appealed from the Commission, not proceedings pending before the Commission. Energy Regulatory Commission v. Kentucky Power Company, Ky. App., 605 S.W.2d 46, 49 (1980). Further, in this case, the rates became effective without any "determination, requirement, direction or order of the Commission."

In summary, the Commission affirms its denial of Auxier Road's motion to shift the burden of proof to intervenors or Commission staff.

Cliff Transmission Line

In granting rehearing on the purchase of the Cliff transmission line and the appropriateness of receiving a return on it the Commission placed the burden on Auxier Road to prove the need and demand for the line and to justify the purchase price. In its response to the Commission's data request issued March 7, 1986, Auxier Road provided information which denoted specific periods of time in which the Cliff line had been used. During the period

March 1985 through May 10, 1985, gas service was maintained to approximately 60 customers when a main ruptured at a river crossing. During December 1985, the line was used again due to low pressure at the other end of the system. The Commission notes that Auxier Road's responses to these recurring problems in the past have been either unsafe (ruptured main) or inadequate (lack of pressure).

Through the data request and subsequent testimony at the re-hearing conducted March 21, 1986, Auxier Road provided additional information supporting the need and demand for the Cliff line. Auxier Road's supply contract with Columbia Gas of Kentucky ("Columbia") stipulates a minimum take of 450 Mcf per month, while the Auxier Road system requires an average of 5,000 Mcf per month. The line provides access to a supplemental source of supply for Auxier Road at a cost per Mcf below the rate charged by Columbia. Both Kentucky West Virginia Gas Company ("Kentucky West") and various local producers represent potential supply sources with whom Auxier Road is currently negotiating.

The purchase price for the line was \$50,600. Although the accepted bid was submitted by the construction company owned by the Auxier Road operator's son, it was the lowest of the three bids received. Furthermore, \$50,600 was a reasonable price for the amount and type of line purchased. The Commission notes that the immediate impact of this cost on the price per Mcf of gas will be more than offset in savings per Mcf to each customer once contracts are signed by Auxier Road for cheaper sources of gas.

The Commission disagrees with Auxier Road's conclusion regarding the need to seek Commission approval for the construction and purchase of the Cliff line. Auxier Road received inaccurate advice if any outside source suggested that Commission approval was not needed. Since the owner of the company which constructed the line also sat on the Board of Directors of Auxier Road, the Commission is of the opinion that the construction was a company-related activity conducted at less than arms-length. Furthermore, the expense of \$50,600 was not "ordinary" considering Auxier Road's financial position and the Cliff line was the first project of this nature initiated by the company. Clearly, the construction of the Cliff line was not within the ordinary course of business.

Despite the fact that the Commission is allowing the Cliff line to be included in Auxier Road's rate base, the Commission serves notice upon Auxier Road that it may not approve such expenses after the fact in the future. The principal reason the expense is approved in this proceeding is due to the potential for Auxier Road to reduce the cost of gas to its customers. The Commission expects the use of this line to result in cheaper sources of gas for Auxier Road, which will be reflected in lower rates through Auxier Road's purchased gas adjustment clause, as new contracts are signed with other suppliers. Auxier Road should advise the Commission as these negotiations progress.

For the reasons stated herein the Commission finds that the cost of the Cliff transmission line in Auxier Road's net

investment rate base is appropriate and therefore has made the following adjustments: 1) increase return on net investment \$3,440; 2) increase depreciation expense \$1,453; and 3) increase taxes \$733.

Intervention in Case No. 9003

In its Order of December 20, 1985, the Commission disallowed the amortization of \$4,542 of costs associated with Auxier Road's intervention in Case No. 9003, An Adjustment of Rates of Columbia Gas of Kentucky, Inc. The Commission is of the opinion that utilities should be actively engaged in cases before various governmental bodies including the Public Service Commission which would have an adverse impact on the costs and/or operations of the utility. Participation by affected parties may have a significant impact on the final decision of the Commission. However, utilities should be selective in the proceedings in which they participate and the manner in which they involve themselves in the proceeding. For instance, in situations where a utility is intervening in the supplier's rate case, the most productive participation would involve presentation of the financial impact of the supplier's proposals and alternative revenue requirements for the utility's class of service. Merely attending public hearings and making general statements as to the inappropriateness of unrelated issues is ineffective and unproductive in rate cases. When deciding whether or not to intervene the utility should also consider the potential savings versus the cost of its participation and should minimize its expenditures for outside professionals as much as possible.

The Commission maintains its position that the benefits of Auxier Road's information in the Columbia rate case is questionable at best and the additional evidence on rehearing is not convincing. However, after further consideration the Commission finds that Auxier Road acted in good faith in attempting to respond to the Commission's suggestion that Auxier Road should participate in major regulatory proceedings. Therefore, the Commission will allow Auxier Road to recover this cost through amortization over a 3-year period as proposed.

Unauthorized Rates

On February 20, 1986, Auxier Road filed a petition for rehearing and motion for clarification of the Commission's Order issued January 31, 1986, granting a rehearing of the December 20, 1985, Order approving new rates. Auxier Road argues that the January 31, 1986, Order granting rehearing precludes the December 20, 1985, Order from becoming a final and appealable order and, consequently, Auxier Road is under no obligation to implement the rates contained in the Commission's December 20, 1985, Order. The Commission finds that this argument lacks merit. KRS 278.390 clearly states that:

Every Order entered by the commission shall continue in force until the expiration of the time, if any, named by the commission in the order, or until revoked or modified by the commission, unless the order is suspended, or vacated in whole or in part, by order or decree of a court of competent jurisdiction.

This legislative mandate that Public Service Commission orders continue in force cannot be defeated by a party's application for rehearing pursuant to KRS 278.400.

The Commission finds that its Order entered December 20, 1985, approving gas rates lower than those then being charged by Auxier Road, continued in force until modified herein. Therefore, Auxier Road should refund to its customers all rates collected since December 20, 1985, in excess of the rates approved by Order of the Commission issued December 20, 1985.

Revenue Requirements

In its Order dated December 20, 1985, the Commission found that Auxier Road should be allowed a return of 7.0 percent on its net investment rate base. The application of this rate of return to the additional amounts found reasonable on this rehearing results in the necessity of \$7,140 in additional revenues determined as follows:

Return on Cliff Line	\$3,440
Cliff Line Depreciation	1,453
Amortization of Rate Case	1,514
Income Taxes	<u>733</u>
	<u>\$7,140</u>

The Commission finds that the revenue granted Auxier Road by Order entered December 20, 1985, should be increased by \$7,140.

IT IS THEREFORE ORDERED that:

1. The Commission's denial of Auxier Road's motion to shift the burden of proof to intervenors and the Commission be and it hereby is affirmed.
2. The Commission's Order entered December 20, 1985, be and it hereby is modified to authorize additional revenue of \$7,140.

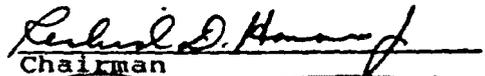
3. The rates set forth in Appendix A be and they hereby are approved for service rendered on and after the date of this Order.

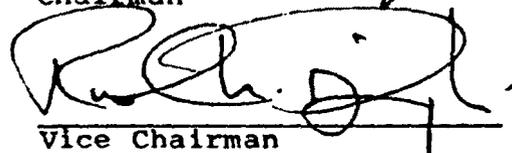
4. Auxier Road shall refund to its customers all rates collected since December 20, 1985, in excess of the rates approved by the Commission's Order entered December 20, 1985.

5. Auxier Road shall file with the Commission, within 20 days of the date of this Order, a plan to refund the unauthorized rates collected since December 20, 1985.

Done at Frankfort, Kentucky, this 2nd day of July, 1986.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 9318 DATED 7/2/86

The following rates and charges are prescribed for the customers served by Auxier Road Gas Company, Inc. All other rates and charges not specifically mentioned herein shall remain the same as those in effect under authority of this Commission prior to the effective date of this Order.

The following rates and charges have incorporated all increases and decreases in purchase gas adjustment clause cases from 9318 through 9318-A.

RATES: Monthly

First	1,000 Cu.Ft.	\$8.52 Minimum Bill
All Over	1,000 Cu.Ft.	7.70 per 1,000 Cu.Ft.

The base rate for the future application of the purchased gas adjustment clause of Auxier Road Gas Company, Inc., shall be:

	<u>Commodity</u>
Columbia Gas of Kentucky, Inc.	\$4.404 per Mcf