

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ADJUSTMENT OF IMPOSITION OF)
SURCHARGE BY THE MIKE LITTLE) CASE NO. 9897
GAS COMPANY, INC.)

O R D E R

Procedural Background

On March 27, 1987, Mike Little Gas Company, Inc., ("Mike Little Gas") filed an application to implement a surcharge to pay for past due purchases owed Kentucky-West Virginia Gas Company ("Kentucky-West"). Kentucky-West, after other efforts to collect the payable, filed an action in Floyd Circuit Court, Kentucky-West Virginia Gas Company, a Corporation, v. Mike Little Gas Company, Inc., a Corporation, C.A. No. 86-CI-829. On June 23, 1987, Mike Little Gas filed a copy of the Agreed Judgment in that case upholding Kentucky-West's claim against Mike Little Gas. Also filed on June 23, 1987, were agreements between the two parties that the Judgment would not be executed until either October 1, 1987, or until a surcharge was granted by the Commission, whichever came first. Kentucky-West, Equitable Gas Company ("Equitable"), and the Attorney General's Office, through the Utility and Rate Intervention Division ("AG"), intervened in this matter.

On August 19, 1987, an Informal Conference was held with representatives of Mike Little Gas, the AG, Kentucky-West and the

Commission's Staff. On September 18, 1987, the Commission's Staff issued its report ("Staff Report") and on September 23, 1987, Mike Little Gas filed its response to the Staff Report.

Discussion

In the Agreed Judgment, Mike Little Gas acknowledges owing Kentucky-West approximately \$119,090 in principal and interest plus court costs and any judgment interest accruing beyond the date of June 15, 1987. Through negotiations, Kentucky-West agreed to accept a settlement offer of \$100,000.

Mike Little Gas contacted the First Commonwealth Bank in Prestonsburg, Kentucky, and was given tentative approval that the bank would loan \$100,000 at a fluctuating interest rate of prime, plus one percent. Mike Little, owner of Mike Little Gas, stated during the informal conference that he would be required to sign the note against his personal assets. To repay the note, Mike Little Gas originally requested a surcharge over a 2-year period, but later in the informal conference requested that the surcharge be spread over a 5-year period. Based on a 5-year payback period and an interest rate of 11 percent, the surcharge would be \$.464 per Mcf. Mike Little Gas further supplied a letter from the bank stating that the loan would not be made at a fixed interest rate.

The Staff, using the rate-making adjustments from Mike Little Gas' last rate case, Case No. 9535, An Adjustment of Rates of the Mike Little Gas Company, Inc., determined in its Report that Mike Little Gas could absorb a significant portion of the \$100,000 if it followed the rate-making adjustments found reasonable in the Commission's Order. Staff further recommended a 2-year surcharge

at \$.55 per Mcf. Under the recommendation of the Staff Report, the remaining principal and interest on the \$100,000 note would be the sole responsibility of Mike Little Gas to pay either through a direct infusion of equity, excess cash flow and/or by adhering to the Commission's determination of appropriate rate-making expenses as described in its Order in Case No. 9535.

Mike Little Gas responded to the Staff Report and objected to the adjustments in Case No. 9535, stating that in actuality it was operating with negative cash flow and that it would consider Chapter 11 Bankruptcy Code proceedings. Counsel for Mike Little Gas stated that since the cost of the bankruptcy proceedings would likely be between \$20,000 and \$60,000 and since Mike Little Gas could not afford such a costly proceeding, it would then consider simply quitting business.

Upon receipt of the response of Mike Little Gas on September 28, 1987, Staff contacted Kentucky-West's counsel, Mike Baker, on September 29, 1987. Mr. Baker contacted Staff on September 30. He stated that the official company position of both Equitable Resources, Inc., and Kentucky-West is that in the event of default by Mike Little Gas, under almost no circumstances would Kentucky-West operate the system but would instead place the system in receivership.

Commission Decision

We are faced herein with a very complex decision. We can accept the Staff Report which is based on our Orders in Case No. 9535 with the possibility that bankruptcy or receivership may result. Or, we can grant the full surcharge requested and in

effect eliminate the adjustments Staff proposed for rate-making purposes. Our choice must be based on what we consider to be the best alternative to ensure safe, continued and reliable gas service to the consumer of the Mike Little Gas system at fair, just, and reasonable rates. We have made the choice to allow the full surcharge over the 5-year period or until the loan is paid in full, whichever comes first.

We have not made this decision lightly. We are at this juncture forced to choose between two difficult alternatives. Receivership would be costly. Whether an, as yet, unknown receiver could or would operate the system safely and reliably is speculative. Based on reports filed with the Commission, Mr. Little has provided good service and has at this date made capital replacements of 70 percent of the pipe in the system. The latter indicates a commitment to make the system safe and reliable. These replacements have also kept costly line losses within reasonable limits.

However, the Commission is concerned because Mike Little Gas has continued to pay expenses which have been disallowed in prior Commission Orders. We do not intend this decision to be interpreted as ratifying these actions on the part of the utility. While we are granting the surcharge for the purpose of paying the loan, we intend to take appropriate measures to assure the rate-payers that rates charged in the future will be fair and reasonable and will be in compliance with Commission directives. The surcharge monies will be accounted for separately and held in a special bank account before being paid directly to the First

Commonwealth Bank to pay off the loan. Bank statements and other supporting data will be required to be submitted to the Commission quarterly to verify that this is being done.

We will further require that Mike Little Gas pay its purchased gas supply bills to Kentucky-West or any other supplier first before any other bills owed by the company are paid.

Finally and most importantly, Mike Little Gas should control its expenses. These expenses should be held to the level found reasonable in the last rate case (Case No. 9535). If additional funds become available above cash requirements for reasonable operating expenses and plant improvements, those funds should be paid directly to the bank to reduce the loan referred to herein. The Commission will direct its Staff to audit the books of Mike Little Gas on an annual basis beginning with the calendar year 1987. If the Staff's analysis reveals a lack of adherence to the Commission's Order in Case No. 9535, we will immediately institute a proceeding to assure that the rates of Mike Little Gas are fair and reasonable.

Accounting and Reporting Requirements

The Commission finds that due to the extreme circumstances of this case it is of vital importance that certain accounting and reporting requirements be implemented concurrent with the surcharge granted herein. Surcharges billed shall be considered the first monies collected. All monies collected from the surcharge shall be deposited in a separate escrowed bank account to be used exclusively to retire the \$100,000 loan consummated to settle the past due gas purchases.

Surcharges billed shall be accounted for as a contributed capital item in Account 253, Other Deferred Credits, and not as a revenue item. The Commission is of the firm opinion that it is fair and reasonable to record the surcharge as contributed capital in Account 253 to show the contributed and cost free nature of these funds which will not entitle Mike Little Gas to earn a return on these funds in future rate cases.

Quarterly reports are required to be filed within 30 days of the close of the calendar quarter. The reports shall include a detailed balance sheet and income statement; the number of Mcf's sold during each month extended by \$.464, the surcharge per Mcf; a photocopy of the bank statement showing the deposit of the surcharge into the escrowed account; a photocopy of the bank statement showing payment on the loan balance; and, for each month of the calendar quarter, the journal entries to record the surcharge in Account 253, Other Deferred Credits.

Other Matters

During the informal conference, Mr. Little stated that Mike Little Gas had been losing customers to Kentucky-West. The AG filed a petition requesting that the Commission investigate this matter. Equitable, a division of Equitable Resources, the parent company of Kentucky-West, filed with its motion to intervene, a statement stating that, on the condition that Mike Little Gas completes its settlement of the debt to Kentucky-West, it would not object to an Order in this case prohibiting Equitable from serving customers of Mike Little Gas. The Commission cannot legally prevent customers located within one-half air mile of a

gathering line from choosing to be served by that gathering line (KRS 278.485). However, if Kentucky-West or Equitable are in any way serving customers in the service area of Mike Little Gas who do not meet the criteria set forth in the above statute, the Commission Orders that this cease immediately.

During the informal conference, Mr. Little requested that the surcharge not be set out separately on the customers' bills. The AG disagreed with this position. The Commission is of the opinion that the surcharge be specifically designated as a separate line item on customer billings.

Notice should be given immediately by direct mailing to the individual customers of Mike Little Gas. The content of the notice required is set out in Appendix B. The Commission Orders that notice be given in accordance with KRS 278.180. However, due to the urgency of the matter, the Commission will allow the surcharge to become effective in 20 days rather than 30 days, upon showing that customer notice has been given.

ORDERS

The Commission having been advised is of the opinion and hereby ORDERS that:

1. Mike Little Gas shall send notice to its customers, as set out in Appendix B, immediately upon receipt of this Order.
2. Mike Little Gas shall send proof of notice to customers on or before 20 days from the date of this Order.
3. The surcharge in Appendix A shall be effective for service rendered on and after October 21, 1987, upon proper proof of notice to customers.

4. The surcharge in Appendix A shall be effective for a period of 5 years or upon full payment of the loan, whichever comes first.

5. The monies collected from the surcharge shall be considered the first monies collected and shall be held in a special bank account and used for payment of the loan only.

6. All accounting and reporting requirements specified in the body of this Order shall be implemented.

7. The surcharge shall be billed as a separate line item on all customer billings.

8. Neither Kentucky-West nor Equitable shall serve any customers in the Mike Little Gas service area who are located beyond one-half air mile from a gathering line owned by either company or the parent company, Equitable Resources, Inc.

9. Mike Little Gas shall pay bills owed its gas suppliers prior to payment of any other expenses.

10. All rates and charges not specifically mentioned herein shall remain in full force and effect.

11. Within 30 days of the effective date of the surcharge, Mike Little Gas shall file its tariff approved herein.

Done at Frankfort, Kentucky, this 1st day of October, 1987.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 9897 DATED October 1, 1987.

The following rates and charges are prescribed for the customers served by Mike Little Gas Company, Inc., on and after October 21, 1987. 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 surcharge is to be in effect for a period no longer than five (5) years.

SURCHARGE: Monthly

All MCF

\$0.464 Per MCF

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 9897 DATED October 1, 1987.

Date

NOTICE

TO ALL MIKE LITTLE GAS COMPANY CUSTOMERS:

Mike Little Gas Company filed an application with the Public Service Commission for authority to levy a surcharge upon its present gas rates, to pay a judgment for gas purchased from Kentucky-West Virginia Gas Company. The proposed surcharge would have added \$.75 per Mcf to all gas sales.

On October 1, 1987, the Public Service Commission approved a surcharge of \$.464 Mcf to extend for no more than 5 years on each Mcf of gas sold. This charge will become effective October 21, 1987, for usage on and after that date.

A copy of the application and Commission Order may be obtained by contacting Mike Little Gas Company, P. O. Box 69, Melvin, Kentucky 41650.