

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF XEBEC GAS COMPANY FOR)
PERMISSION TO INSTALL, OWN, AND OPERATE)
CERTAIN "INTRASTATE PIPELINE" FACILITIES) CASE NO. 9370
IN THE COMMONWEALTH OF KENTUCKY)

O R D E R

Xebec Gas Company ("Xebec") filed an application on June 21, 1985 requesting that the Commission determine that its proposed pipeline facilities be declared an "intrastate pipeline" pursuant to KRS 278.504(1), and that those facilities not be considered a "utility" defined in KRS 278.010(3); that Xebec be allowed to construct the proposed facilities without the issuance of a certificate of public convenience and necessity; and that Western Kentucky Gas Company ("Western") provide Xebec with a tap to connect the proposed facilities with those of Western's at Xebec's expense as well as transport volumes of natural gas delivered by Xebec through the proposed facilities to various locations on Western's system. Xebec relied on KRS 278.470, 278.480, 278.490, and 278.505 for this request.

On July 3, 1985, Xebec filed a motion requesting that the original application be amended to delete the request related to the declaration of non-utility status and the request to commence construction without a certificate of public convenience and necessity.

Western filed a motion for full intervention on July 15, 1985, which was granted on July 16, 1985.

A hearing was held on November 14, 1985. Subsequent to that hearing, the Commission initiated Administrative Case No. 297, An Investigation of the Impact of Federal Policy on Natural Gas to Kentucky Consumers and Suppliers, which involved some of the issues raised by Xebec. On January 30, 1986, the Commission ordered this case continued until 30 days after the Final Order in Administrative Case No. 297 was issued. The case was continued again on August 4, 1987, pending an Order on Rehearing in Case No. 297.

On November 9, 1987, the Commission ordered Xebec and Western to update or revise any information that had changed or become available since the November 14, 1985 hearing.

On December 9, 1987, Xebec filed a "revised application" requesting that it be granted a certificate of public convenience and necessity to construct and operate a proposed pipeline; that it be certificated as an intrastate pipeline authorized to provide transportation services for natural gas from ANR Pipeline Company to Western; that Western be required to provide Xebec a tap to connect the proposed facilities based on KRS 278.470, 278.480, 278.490, and 278.505; that Xebec be required to reimburse Western for the cost of the tap up to a maximum reimbursement of \$10,000; that Xebec be allowed a proposed gas transport service agreement as a basis for providing service through the proposed facilities; that certain "general terms and conditions" be approved for use by Xebec in providing service through the proposed facilities; and

that Xebec's tariffs for transportation services be approved effective March 1, 1988.

By Order issued February 17, 1988 the Commission granted Texas Gas Transmission Company's ("Texas Gas") motion of February 3, 1988 for full intervention; denied Xebec's petition of January 28, 1988 requesting expedited approval of its revised application; and established a procedural schedule to complete the case with a hearing on the revised application to be held April 7, 1988.

On March 28, 1988, the Attorney General, by and through its Utility and Rate Intervention Division, filed a Motion for Limited Intervention. That Motion was granted on April 1, 1988.

At the hearing on April 7, 1988 Xebec, Western, and Texas Gas presented evidence on the issues involved in the case. On April 25, 1988, Xebec filed information as directed at the hearing and requested confidential treatment. Xebec has complied with 807 KAR 5:001, Section 7 and its request should be granted.

Xebec and Texas Gas filed briefs on June 8, 1988; Western filed its brief on June 9, 1988. Western filed a reply brief on June 23, 1988 and Texas Gas filed a reply brief on June 24, 1988.

One of the statutes relied on by Xebec for its proposal is KRS 278.470. That statute provides: "Every company receiving, transporting or delivering a supply of oil or natural gas for public consumption is declared to be a common carrier, and the receipt, transportation and delivery of natural gas into, through and from a pipeline operated by any such company is declared to be a public use." Xebec does not directly address the applicability of this statute to the facts of the case. However, the record

discloses at least two problems. First, Western's present facilities are incapable of accepting the volumes of gas proposed to be transported by Xebec, without substantial, costly modifications to both their operational and physical configuration.¹ The second problem is the cost of the interconnection to Western, estimated to be \$124,200.² In contrast to this cost to Western, Xebec has proposed to reimburse Western only \$10,000. The Commission finds that Xebec has provided no support for the proposition that Western must alter its operation and spend substantial sums of money in order to modify its system to accommodate Xebec's proposed interconnection.

The next section relied upon by Xebec is KRS 278.480 which states:

Any common carrier of crude petroleum or gas by pipeline may accept for transportation any oil or gas offered to it for that purpose by the person in possession, and shall redeliver it upon the order of the consignor unless prevented by order of a court of competent jurisdiction, and shall not be liable therefore to the true owner out of possession, except from the time that the order of court is served upon it in the same manner as the summons in a civil action.

Because this section is permissive, not mandatory, it provides no conclusive basis for Xebec to compel Western to complete the proposed interconnection. There are several factors which the Commission finds persuasive in rejecting Xebec's effort to compel Western to transport Xebec's gas. The testimony of Western's witness indicated that use of its facilities in the

¹ Transcript Vol. I, page 201, Vol. II, page 117, page 121-122.

² Transcript Vol. II, page 104.

present manner saves Western's customers approximately \$5 million a year.³ Xebec admitted on cross-examination that if the proposed facilities are constructed, Western could lose this \$5 million saving.⁴ Xebec also admitted that the changes to Western's present facilities necessitated by the interconnection would be borne by Western's customers.⁵

The third section relied upon by Xebec is KRS 278.490 which states:

Each company engaged in the receipt, transportation or delivery of oil or natural gas for public consumption shall at all reasonable times receive, for transportation and delivery, from such pipes as may be connected up with any main or tributary line, all oil or gas that may be held and stored or ready for delivery, if the main tributary line has the means or capacity to receive, transport and deliver the oil or gas that is offered. If the main or tributary line is operating to such capacity that it is impossible or impractical to receive or transport all the oil or gas offered from the connecting lines, the company operating the main or tributary lines shall receive and transport the oil or gas that is offered on a proportionate basis, based on the daily production of each producer whose oil or gas is offered for transportation.

The Commission finds no support for Xebec's position in this statute. It obviously deals with pipelines' obligation to accept gas or oil from local producers if they have the means or capacity to do so. Because Xebec is not a "producer" it does not fall within the scope of this statute. Secondly, the statute refers to

³ Transcript Vol. II, page 168.

⁴ Transcript Vol. I, page 201.

⁵ Transcript Vol. I, pages 153-154, and page 102, Transcript Vol. II, page 117-118.

existing connections. Xebec has no existing connection to Western's system. Finally, the statute refers to the means or capacity to receive, transport or deliver the gas. The point at which Xebec proposes to deliver gas into Western's system is one that is used primarily in the operation of Western's storage system. Because of the operation of this storage field, Western has been able to reduce its daily demand charge from Texas Gas, which results in substantial savings to Western's ratepayers.⁶ In addition, Western would incur a cost of approximately \$5 million more per year in gas costs to Texas Gas for the same quantity of gas if the use of the storage fields was disrupted.⁷ Western's testimony substantiates its claim that transporting Xebec's gas at the proposed interconnection site would interfere with Western's operations of these storage fields and could jeopardize the security of supply for all of the Texas Gas Zone 3 customers and could result in Western incurring substantial peak day overrun penalties.⁸

Western's testimony also demonstrates that approval of the interconnection would ". . . drastically affect our operation of the system."⁹ For example, according to Xebec's proposal, it would own and control all of the equipment for the interconnect

⁶ Transcript Vol. II, page 168.

⁷ Transcript Vol. II, page 168.

⁸ Prefiled testimony of L. E. Van Meter II, March 4, 1988, page 5.

⁹ Transcript Vol. II, page 67.

from the "tap point" on ANR's 30-inch pipeline to the "tap point" on Western's pipeline.¹⁰ Also, Xebec would own and operate all equipment controlling the quantity of gas and the pressure of the gas entering Western's system.¹¹ Furthermore, Xebec's testimony indicates that its proposal could interfere with Western's control of the pressure of gas entering into its system at the point of interconnection.¹²

Not only does Xebec's proposal affect the physical plant of Western, it would also require substantial changes in the operation of the storage fields.¹³ For example, gas has never flowed from the Madisonville system into the Hopkinsville system or St. Charles storage field, yet Xebec's proposal would necessitate such flow.¹⁴ Xebec's proposal would also require Western to operate its system at a lower compressor's suction pressure at the St. Charles field which would take twice as long to store an equivalent amount of gas, plus significantly more compressor engine fuel.¹⁵ Alteration of current operations could force Western to purchase an after-cooler for its St. Charles compressor.¹⁶ The witness for Xebec admitted that these changes

¹⁰ Winningham Direct Exhibit 2.

¹¹ Transcript Vol. I, page 171, page 176.

¹² Transcript Vol. I, page 177.

¹³ Transcript Vol. I, page 201.

¹⁴ Transcript Vol. II, page 76.

¹⁵ Transcript Vol. II, page 117.

¹⁶ Transcript Vol. II, page 121, 122.

would have to be made and that Western would have to modify the operation of its equipment and its storage system to accommodate the proposal.¹⁷

Finally, Xebec's proposal would require that Western alter its current purchasing and transportation on the Texas Gas system. The gas that Xebec displaces on Western's system would otherwise come from Texas Gas.¹⁸ To the extent that this would cause a deficiency in its purchases from Texas Gas compared to a prior base period, Western could incur increased daily demand charges and increased take-or-pay liabilities from Texas Gas as a result of Xebec's displacement of this pipeline gas.

The last statute relied upon by Xebec is KRS 278.505. It states:

(1) The Public Service Commission may, by rule or order, authorize and require the transportation of natural gas in intrastate commerce by intrastate pipelines, or by local distribution companies with unused or excess capacity not needed to meet existing obligations at the pipeline or distribution company, for any person for one or more uses, as defined by the commission by rule, in the case of:

(a) Natural gas sold by a producer, pipeline or other seller to such persons; or

(b) Natural gas produced by such person.

Under this statute the person requesting gas to be transported must own the gas or produce the gas. Xebec meets neither of these requirements.¹⁹

¹⁷ Transcript Vol. II, page 22, page 117.

¹⁸ Transcript Vol. I, page 201.

¹⁹ Xebec's response to Commission request for information, March 18, 1988, No. 17, Transcript Vol. I, page 71.

There is another statutory obstacle that Xebec has failed to overcome. In KRS 278.504, a local distribution company such as Western is exempted from the requirements of KRS 278.505 if its system is "primarily used for storage or gathering or low pressure distribution of natural gas." The evidence is uncontroverted that the pipeline into which Xebec proposes to interconnect is and always has been primarily used for storage.²⁰

The only other argument raised by Xebec that needs to be addressed is whether it has met the requirements for a certificate of public convenience and necessity under KRS 278.020. Xebec argues that if the public interest indicates a demand and need for the service it proposes, a certificate should be issued. It argues that its proposal will provide Western and its customers the opportunity to acquire lower cost gas.²¹ Xebec also asserts that its proposal will provide Western and its industrial customers with the alternative of purchasing "self help" gas from the Oklahoma/Kansas area, where gas prices have historically been lower than those from the Louisiana/Texas Gulf Coast area, where Western currently purchases its gas.²² Finally, Xebec claims that there will be no wasteful duplication of facilities as a result of

²⁰ Transcript Vol. II, page 167.

²¹ Xebec Response to Western's Motion to Intervene, July 17, 1985.

²² Xebec Response to Texas Gas Request, March 14, 1988, pages 2-3, Exhibit C; Xebec's response to Commission request, March 18, 1988, page 7-8, Exhibit B; Transcript Vol. I, pages 28, 45.

the construction of its proposed interconnection. The premise of this argument is that Western currently has only one source of gas supply, Texas Gas.

After reviewing the record, the Commission finds that the evidence does not support Xebec's position that this project is in the public interest and that it will not create a duplication of facilities. Although Xebec emphasizes the lower cost of gas from the Oklahoma/Kansas area, it fails to consider related cost of service issues. For example, Xebec's cost analysis does not take into account the transportation rate that ANR might charge Xebec for delivering the gas into Western's system. Second, if Western is required to accept the volumes of gas proposed by Xebec, it would have to reduce its takes of gas from Texas Gas.²³ As previously discussed, this could cost Western's ratepayers up to \$5 million annually in additional demand charges. The Commission believes that the potential increase in cost of gas to the vast majority of Western's ratepayers in exchange for the speculative reduction in cost of gas to a limited number of customers is not in the public interest.

The Commission also finds that Xebec's proposal would lead to the wasteful duplication of facilities of Western. As previously discussed, Western would be required to incur substantial expense in modifying its system to accommodate Xebec's interconnection.

²³ Transcript Vol. I, page 201.

Western would also lose the current capabilities of its St. Charles field. Also, Xebec has failed to show that the existing interconnections between Texas Gas, ANR, and Western would not be a more efficient alternative to Xebec's proposal without the concomitant adverse effects on Western's system.²⁴

The Commission concludes as a result of its analysis and findings that the evidence presented by Xebec fails to support its application. The Intervenor's evidence is virtually uncontroverted that Xebec's proposed interconnection will seriously disrupt the current operational mode of Western, that Western's physical plant will require extensive modification, that Western will incur unreimbursed expense, and that there will be a substantial potential for an adverse impact on the rates of the vast majority of Western's customers. For these reasons, Xebec's application should be denied.

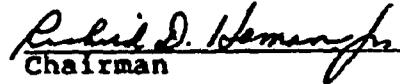
IT IS THEREFORE ORDERED that:

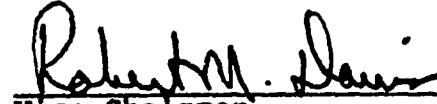
- (1) Xebec's motion of July 3, 1985 to amend its original application is granted;
- (2) Xebec's request of April 25, 1988 for confidentiality is granted;
- (3) Xebec's application originally filed June 21, 1985, amended July 3, 1985, and revised December 9, 1987 is denied.

²⁴ Transcript Vol. II, page 10.

Done at Frankfort, Kentucky, this 21st day of July, 1988.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Executive Director