

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF THE JOHNS CREEK)
GAS AND WATER COMPANY) CASE NO. 90-050

O R D E R

On March 12, 1990, the Commission entered an Order requiring Betty Music to appear before the Commission to present testimony and evidence on the present condition of the Johns Creek Gas and Water Company ("Johns Creek") and her efforts to operate and maintain that system, and to show cause why she should not be subject to penalties of KRS 278.990 for her alleged failure to comply with KRS 278.020(4) and KRS 278.030(2) and why the Johns Creek system should not be declared abandoned or in the alternative cease all operations. Commission action was initiated based upon Commission Staff allegations that Ms. Music had failed to operate and maintain the Johns Creek system in compliance with Commission regulations; that she had failed to pay the wholesale supplier of gas, Columbia Gas of Kentucky, Inc. ("Columbia"); that Johns Creek customers had assumed certain responsibilities of Ms. Music to ensure a supply of natural gas to their homes; and that Johns Creek was a deteriorating and poorly maintained distribution system which poses an immediate danger to public safety.

Prior to the June 8, 1990 hearing, the Commission was advised of Ms. Music's death, and since that time has been unable to

locate the successor to her interest in Johns Creek. However, given the serious nature of Commission Staff's allegations, particularly the allegations in the Commission Staff Inspection Report that the Johns Creek system is potentially dangerous and should be shut down, the Commission ordered on May 24, 1990 that this investigative proceeding continue.

This investigation presents to the Commission three issues. The first issue is whether Johns Creek has been abandoned by its owner, Ms. Music, and thereby failing to assume responsibility as owner to maintain utility service to her customers. The second issue is whether Johns Creek should be ordered to cease operations and Columbia ordered to discontinue service due to the alleged safety problems on the system. The final issue is whether Columbia should be ordered to provide direct service to each of the customers currently served by Johns Creek.

Abandonment

On May 30, 1990 and June 6, 1990, the Public Service Commission ran a large ad in the Floyd County Times which noticed the "heirs of Betty Music Hampton Johns Creek Gas and Water Company." The ad described the hearing to be held at the Commission on June 8, 1990 and the issues addressed in the show cause order.

The hearing was held on June 8, 1990 and despite the Commission's advertisement no heirs of Betty Music appeared. In fact, no persons appeared on behalf of Johns Creek.

Based upon testimony given at the June 8, 1990 hearing by Kenneth Robinson, a Johns Creek customer, Ms. Music became owner of Johns Creek in 1978 subsequent to her divorce from Forest Music.¹ Since 1978 none of the Johns Creek customers have received any bills from Ms. Music,² nor has she visited the system.³ In 1979 Columbia advised each customer that Ms. Music had not paid for gas delivered to Johns Creek and requested that one of the customers assume the responsibility for reading meters and paying Columbia. Since 1979 Columbia has been paid for gas delivered to Johns Creek through an agreement with the customers whereby Columbia sends its bill to Ms. Music in care of Mr. Robinson, who reads the customers' meters and collects what is owed by each customer and pays Columbia directly.⁴ Mr. Robinson has never received any payment for his services, but through this agreement the Johns Creek customers have maintained a source of gas supply. The Commission concludes from the evidence of record that the Johns Creek utility has been abandoned.

Safety

In order to determine the current physical condition of the Johns Creek system, the Commission's Gas Pipeline Safety Branch conducted a comprehensive safety inspection on September 22, 1989.

¹ Transcript of Evidence ("T.E."), June 8, 1990, page 14.

² T.E., page 14.

³ T.E., page 15.

⁴ T.E., page 17.

During the inspection, the utility safety investigator, Earl Alderman, Jr., spoke with Mr. Robinson, who stated that no maintenance had been performed on the system except once several years ago when two customers repaired a leak with electrical tape.⁵ According to Mr. Alderman's inspection report, the system consists of approximately 600 feet of 2-inch and 3/4-inch steel pipe and one short section of 3/4-inch black, water pipe. Numerous deficiencies to Commission regulations were found during the inspection, including several deficiencies to the Commission's gas pipeline safety regulation 807 KAR 5:022: aboveground plastic pipe, no corrosion control program, no established maximum allowable operating pressure, no procedure for continuing surveillance, no weekly odorant checks, no record of inspection of valves, and a gas leak near one residence.⁶ Mr. Alderman concluded in his report and testified at the June 8, 1990 hearing that due to the apparent neglect of the owner for the past 10 years, the Johns Creek system is potentially dangerous and should be shut down.

Edwin Scott Smith, manager of the Commission's Gas Pipeline Safety Branch, also testified at the June 8, 1990 hearing regarding the condition of the Johns Creek system. During his May 9, 1990 inspection of the system, he observed severe corrosion on the main, which in his opinion is not uncommon with unprotected pipe. Of the numerous violations noted in Mr. Alderman's report,

⁵ Affidavit of Earl H. Alderman, Jr., March 5, 1990.

⁶ Attachment to Alderman Affidavit, pages 2-3.

Mr. Smith testified that the lack of maintenance on the underground pipe and the absence of any corrosion control or leak prevention efforts posed the greatest threat to public safety.⁷ It was also Mr. Smith's opinion that without maintenance leaks would continue to develop which, when freezing conditions occur, would pose an even greater safety hazard.⁸ According to Mr. Smith, Columbia should be ordered to cease providing gas service to Johns Creek before freezing conditions occur again.⁹ The Commission concludes from the evidence of record that the condition of the Johns Creek system poses an eminent danger to public safety.

Extension by Columbia

Having found the Johns Creek system to be abandoned and in unsafe condition, the Commission finds that Columbia should discontinue natural gas service to it. We now must decide whether Columbia should be required to extend direct service to the system's customers. Columbia operates a distribution main near the Mountain Springs Subdivision. It estimates that to provide direct service to these customers would require the installation of 625 feet of pipe and related appurtenances at a cost of \$22,246.

⁷ T.E., pages 64-65.

⁸ T.E., pages 66-67.

⁹ T.E., page 63.

Characterizing any extension of service to the Johns Creek customers as a "losing proposition," Columbia opposes it. Columbia contends that "the revenue stream generated by serving . . . [the Johns Creek customers] will not offset or recover the capital expenditure required to serve them."¹⁰ According to its estimates, the Johns Creek customers will generate annual revenues of only \$2585 after an initial expenditure of \$22,246 to serve them. Furthermore, it points to the high cost per customer for extending service. Columbia will expend \$4,067 per customer to extend service to the Johns Creek customers. The average cost of extending service to a Columbia customer is only \$1,398. As a result, "the cost of providing service to this group will be subsidized by Columbia's other ratepayers if Columbia constructs the necessary facilities."¹¹

The Commission is unpersuaded by these arguments. Columbia's own calculations show that service to these customers would produce a profit. Depreciation and operation and maintenance expenses are estimated to be only \$1,374 annually. As annual revenues are expected to be \$2,585, an annual profit of \$1,211 should be achieved by serving these customers. These figures, furthermore, do not include revenues which may be derived from serving other customers in the area.

¹⁰ Letter from Roger C. Post to Lee MacCracken (April 2, 1990) (responding to Commission Order of March 12, 1990), page 2.

¹¹ Id.

The amount of profit derived from an extension of service is not a controlling factor. The New Jersey Superior Court addressing arguments similar to those made by Columbia in Lakewood Township v. Lakewood Water Co., 102 A.2d 671 (N.J. Sup. 1954) declared:

The fact that a utility will not realize a profit or an immediate profit through a specific addition to or extension of its facilities, which serves the public necessity and convenience, is not dispositive of the matter. The criteria is the over-all rate of return in an operation such as that of respondent. The holder of an exclusive franchise to supply important and essential public needs in a limited area cannot pick and choose its customers solely from the standpoint of a pecuniary advantage and ignore those who may be said to be an integral part of the locality served, simply because considered in isolation, there service will not produce a profit.

Id. at 675. See also Cedar Island Improvement Ass'n v. Clinton Electric Light & Power Co., 114 A.2d 535 (Conn. 1955) ("[A] company has no right to expect that all of its extensions will be immediately remunerative.")

Columbia has failed to show how other ratepayers would be subsidizing this extension of service. Its counsel conceded at the hearing in this matter that the rate impact on Columbia's present customers from this proposed extension of service will be insignificant as the costs will be spread over Columbia's customer base of approximately 119,000.¹²

¹² T.E., pages 96-97.

After reviewing the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. Since 1978 Betty Music Hampton has been the owner of record of the Johns Creek system.

2. Ms. Hampton died on March 13, 1990. No person has come forward or been identified as her successor-in-interest to the Johns Creek system.

3. Since 1978 neither Ms. Hampton nor her agents have billed the customers of the Johns Creek system for natural gas service provided by that system.

4. No rate schedule for natural gas service provided by the Johns Creek system has been filed with the Commission by Ms. Hampton or her agents.

5. Since 1978, none of the reports required by Commission regulations to be filed annually with the Commission have been filed for the Johns Creek system.

6. Since 1978 Ms. Hampton allowed the physical condition of the Johns Creek system to deteriorate. Neither she nor any authorized agent has performed any maintenance or repairs on that system since her acquisition of it.

7. Ms. Hampton's death and the failure of any other person to come forward to claim ownership of Johns Creek demonstrates an intent to permanently cease providing natural gas service through the Johns Creek system.

8. The Johns Creek system has been abandoned.

9. The current condition of the Johns Creek system poses an eminent danger to public safety. Leaks within the system have

been improperly repaired. Improper piping and equipment are currently installed on the system. The system's piping is suffering severe corrosion.

10. Given the current condition of the Johns Creek system, Columbia should discontinue all natural gas service to it.

11. The residents of the Mountain Springs Subdivision of Johnson County, Kentucky, are without adequate, efficient and reasonable natural gas service.

12. Columbia has facilities near the Mountain Springs Subdivision which could provide adequate, efficient, and reasonable natural gas service to the residents of that subdivision.

13. An extension of natural gas service by Columbia to the Mountain Springs Subdivision is reasonable and would not result in a confiscation of Columbia's property without reasonable compensation nor impact significantly on Columbia's other ratepayers.

IT IS THEREFORE ORDERED that:

1. Johns Creek System is hereby declared abandoned and shall cease all operations no later than October 31, 1990.

2. Columbia shall discontinue natural gas service to the Johns Creek System no later than October 31, 1990.

3. Within 20 days of the date of this Order, Columbia shall notify in writing all residents of the Mountain Springs Subdivision of Johnson County, Kentucky, that it has been ordered to discontinue natural gas service to the Johns Creek System and


to extend direct natural gas service to those residents desiring such service.


3. Within 60 days of the date of this Order, Columbia shall extend direct natural gas service to all residents of the Mountain Springs Subdivision requesting such service in accordance with Commission Regulation 807 KAR 5:022, Section 9(16), and Columbia's tariff.

4. Within 90 days of the date of this Order, Columbia shall advise the Commission in writing of the number of residents of the Mountain Springs Subdivision to whom service has been extended and the total costs of this extension.

Done at Frankfort, Kentucky, this 21st day of August, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director