COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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| RATE APPLICATION OF WESTERN KENTUCKY GAS COMPANY | ) | CASE NO. 95-010 |

# O R D E R

On August 17, 1995, Western Kentucky Gas Company ("Western") filed a Request for Rehearing and Motion for Extension of Time to Withdraw from a Settlement Agreement filed by the parties in this case. The Commission accepted and modified the Settlement by Order issued August 10, 1995.

Western requests that the Commission reconsider only that portion of its August 10, 1995 Order modifying the depreciation rates agreed to by the parties to the Settlement. The Attorney General, by and through his Public Service Litigation Branch ("AG"), filed a response in support of Western's rehearing request as have Shirley Manley, represented by Kentucky Legal Services, Commonwealth Energy Services, Inc., Southern Gas Company of Delaware, Inc., CMS Gas Marketing, and Kentucky Industrial Utility Customers. After considering the pleadings and being otherwise sufficiently advised, the Commission finds that rehearing should be denied for the reasons set forth below.

Any party may request rehearing and may offer "additional evidence that could not with reasonable diligence have been offered on the former hearing." KRS 278.400. Although Western has filed attachments to its request, it made no new offer of proof and no showing of any new evidence related to the depreciation issue.

This issue was fully explored in discovery and the record supports the Commission's modification.

Western argues that the Commission must allow recovery of the depreciation expense resulting from the modification of the Settlement depreciation rates. In Western's view, the Order does not adjust the Settlement revenue requirement and resulting rates to reflect the modification in depreciation rates. Western obviously assumes from the foregoing arguments that the Commission did not consider any revenue impact that modified depreciation rates would have on the overall Settlement. This assumption is incorrect. Depreciation was evaluated, as were all other Settlement provisions, recognizing the interrelationship that exists among all items agreed to in settlement. The modification in depreciation rates was necessary and supports the overall revenue requirement and resulting rates agreed to by the parties.

The Commission stated in its Order of August 10, 1995 that the Settlement was reasonable as modified. Conversely stated, the Settlement was not reasonable without the Commission ordered modifications. In order to meet its statutory obligation to ensure a fair, just, and reasonable outcome, the Commission, reviewing the Settlement as a whole, would have been unable to approve it as filed without modification.

As the Commission has stated before, Settlements are to be encouraged. The Commission's statutory obligation is to review proposed rates for reasonableness, whether those rates are derived from the utility's or some intervening party's development of a revenue requirement, or the result of a Settlement proposal representing the agreement of all parties to a proceeding.

Unanimity of agreement does not deprive, nor does it relieve, the Commission of its statutory obligation to determine that the public interest has been served. Such a determination can only be made by undertaking a review of the record as it exists at the time an agreement is filed. The statutes do not provide for the abrogation of this obligation by deferring to any individual or group who wants to strike its own bargain.

Rather, the Commission must, consistent with its legal obligations, ensure that the public interest is served in approving these agreements by reaching an independent conclusion regarding the merits of any Settlement. As the AG states "[t]he question is not whether the Settlement could contain different terms. The question is whether the Settlement contains fair, just and reasonable terms." The Commission could not agree more.

Western argues in the alternative, that a full evidentiary hearing be held on the single issue of depreciation rates. The Commission notes that the parties to the Settlement agreed to waive their right to request a hearing to demonstrate the reasonableness of the Settlement. It would be inappropriate and virtually impossible to review adequately one component of the Settlement without considering the other Settlement provisions.

IT IS THEREFORE ORDERED that Western's request for rehearing on the issue of its depreciation rates is hereby denied and the August 10, 1995 Order is affirmed in its entirety. Any party wishing to withdraw from the Settlement shall notify the Commission

within 10 days of the date of this Order and further proceedings shall be scheduled.

Done at Frankfort, Kentucky, this 29th day of August, 1995.

PUBLIC SERVICE COMMISSION

Robert M. Davis
Vice Chairman

Linda K Breathitt
Commissioner

DISSENTING OPINION OF CHAIRMAN GEORGE EDWARD OVERBEY, JR.

I was persuaded to sign off on our August 10, 1995 Order on the basis that the "modifications . . . should not affect the agreement significantly."[1] Western's request and arguments for rehearing have put that notion to rest.

By insisting on these modifications, the Commission is rewriting the Settlement Agreement. Should any party choose to withdraw from the Settlement Agreement, we are all back at square one. A full blown rate case could well lead to judgments strikingly at variance with the terms spelled out by the Settlement Agreement. As a consequence, some or all of those judgments could be less onerous for Western and Western's customers, or could well be more onerous. No one possesses the proverbial crystal ball.

The essential question remains. Is the Settlement Agreement signed by all the parties, featuring as it does all of its articulated terms, including the adoption of a depreciation study

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conducted by Deloitte & Touche, such as to render the Settlement Agreement unreasonable and, thus, unacceptable? I don't think so.

Aside from the obvious arguments that compel very serious consideration of proposed settlements, any decision-making tribunal needs to always keep in mind what tinkering with such settlement agreements or outright rejection might lead. Unless the settlement agreement on its face, at first blush, runs amok over standards of fair, just and reasonable, I see no compelling reason to open Pandora's box.

Especially is this true where, as here, the majority focuses on but one item, depreciation studies, and mandates a substitute which brings about an <u>increase</u> in required revenue.

Nor, of course, is it just Western's side of the bargain we put in jeopardy. What about the benefits the Attorney General, the Office of Kentucky Legal Services, Inc. and the Appalachian Research and Defense Fund, Inc; the Kentucky Industrial Utility Customers; Commonwealth Energy Services, Inc.; CMS Gas Marketing; Southern Gas Company; and David Spainhoward received via this Settlement Agreement? Those benefits are also put in harm's way.

From my view of the Settlement Agreement from its four corners, I find it fair, just and reasonable and one which we ought to accept <u>sans</u> any modification.

George Edward Overbey, Jr.
Chairman

ATTEST:

Executive Director