

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BLAZER ENERGY CORP., INC.)	
A WHOLLY OWNED SUBSIDIARY OF EASTERN)	CASE NO. 98-489
STATES OIL & GAS, INC. TO ADJUST RATES)	

O R D E R

On September 9, 1998, Blazer Energy Corp., Inc. ("Blazer") applied to the Commission for an increase in the rate it charges its domestic end-use or "farm-tap" customers pursuant to KRS 278.485. On April 8, 1999, the Commission entered an Order setting Blazer's rate for its KRS 278.485 customers. On April 27, 1999, Blazer filed for rehearing of the Commission's April 8, 1999 Order. By Order dated May 17, 1999, the Commission denied rehearing.

On November 23, 1999, Blazer filed a petition seeking Commission approval to apply the previously approved "farm-tap" rates to Blazer's right-of-way and lease ("ROW") customers. On December 6, 1999, intervenor Pike County Citizens United for Justice ("PCCUJ") filed a response to Blazer's petition.

The present petition before the Commission addresses an issue that was first brought before the Commission in Case No. 91-396.¹ In that case Ashland Exploration, Inc. ("Ashland"), Blazer's predecessor in interest, was granted a rate adjustment for its

¹ Case No. 91-396, An Investigation of Ashland Exploration, Inc., Order dated July 13, 1993.

“farm-tap” customers. However, the Commission declined to adjust any rates for the 370 ROW customers, noting the challenge to the Commission’s jurisdiction to set those rates, and the pending federal litigation.² The Commission noted that Ashland had acquired certain OXY USA, Inc. (“OXY”) gas properties in Kentucky from which approximately 370 customers receive gas service pursuant to either ROW or lease agreements. These ROW agreements, many of which were entered into during the 1940s and 1950s, permitted the ROW grantors to purchase natural gas at a specified rate in exchange for the right-of-way to develop oil and gas production. “Farm-tap” customers, however, receive gas service pursuant to a right granted by KRS 278.485. KRS 278.485 provides, among other things, that pipeline companies that obtain gas from producing wells in Kentucky shall, upon request of certain persons owning property upon which the well is located or over which the pipeline is located, provide gas service to those persons pursuant to the terms and conditions set out in the statute.

In Case No. 91-396, the Commission stated that, upon the conclusion of the federal litigation, it would review the issue of whether or not it had jurisdiction over the rates for ROW customers.

The federal litigation was not concluded at the time Blazer filed its 1998 application for a rate increase for its “farm-tap” customers. In its Order of April 8, 1999, the Commission approved rates for the “farm-tap” customers, but again deferred any review of the ROW customer rates until the conclusion of the federal litigation. The petition for review filed by Blazer states that the Sixth Circuit Court of Appeals has

² Pike County Citizens United for Justice, et al v. Ashland Exploration, Inc., Civil Action No. 92-255 (E.D. Ky., February 18, 1998).

affirmed the federal district court's dismissal of the litigation and that the time for filing any appeal has expired; therefore, the dismissal is final. The response filed by PCCUJ does not dispute the conclusion of the federal litigation. Therefore, the Commission finds the federal litigation is concluded and will review the issue of the Commission's jurisdiction to determine rates of ROW customers.

In Case No. 91-396, both Ashland and PCCUJ contended that the Commission had no jurisdiction to set rates for the ROW customers upon the grounds that the service to them was contractual, not statutory. The Commission agrees. In both Case No. 91-396 and the present case, the record contains nothing to support the conclusion that these ROW customers have requested or have obtained gas service under the provisions of KRS 278.485. Accordingly, the Commission does not have jurisdiction to determine their rates. Blazer, as Ashland's successor in interest, cites Union Gas and Oil Co. v. Diles, 200 Ky. 188, 254 S.W. 205 (1923) in support of its position that KRS 278.485 does not apply to ROW customers. PCCUJ cites Dept. for Natural Resources and Environmental Protection v. Stearns Coal & Lumber Co., 563 S.W. 2d 471 (1978) for the conclusion that the Commission lacks jurisdiction over the rates for ROW customers.

The Commission finds that it does not have jurisdiction to determine rates for ROW customers, as those customers are not served by a local distribution company and are not subject to KRS 278.485.

Having reviewed the record and being sufficiently advised, the Commission HEREBY ORDERS that the petition of Blazer to adjust the rates of ROW customers is dismissed.

Done at Frankfort, Kentucky, this 9th day of February, 2000.

By the Commission

ATTEST:

Executive Director