

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

GASCO DISTRIBUTION SYSTEMS, INC.	)	
_____	)	CASE NO. 2000-147
	)	
ALLEGED VIOLATION OF KRS 278.020	)	

O R D E R

Gasco Distribution Systems, Inc. ("Gasco") is a local gas distribution company subject to the Commission's jurisdiction pursuant to KRS 278.040. On December 15, 1999, in Case No. 99-501,<sup>1</sup> Gasco applied for a Certificate of Public Convenience and Necessity to construct approximately 31,700 feet of transmission main to provide natural gas service to existing and additional customers in Albany, Kentucky and the surrounding area.

In an Order dated January 24, 2000, the Commission requested from Gasco certain information concerning the proposed construction. In its response filed on January 31, 2000, Gasco advised the Commission that construction on the proposed facilities had commenced on November 1, 1999, and had been completed on January 25, 2000.

KRS 278.020(1) prohibits any person, partnership, public or private corporation, or combination thereof from beginning construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010 until

---

<sup>1</sup> Case No. 99-501, The Petition of Gasco Distribution Systems, Inc. For Approval of a Certificate of Convenience and Necessity to Construct Facilities.

the Commission has issued a certificate authorizing such construction. Pursuant to that statute, the Commission denied Gasco's application for a certificate to construct the pipeline.<sup>2</sup>

On April 2 and May 5, 2000, the Commission issued Orders requiring Gasco and its officers and employees to show cause why they should not be penalized for violation of KRS 278.020(1).

A formal hearing was held on August 16, 2000. In that hearing, Gasco's President, Fred Steele, testified that Gasco knew that a certificate was required.<sup>3</sup> However, when Gasco learned that the Clinton County schools had converted their heating systems on the first of October and had requested service, Gasco determined it was necessary to proceed with construction without obtaining the required certificate.

It is clear that Gasco knew from the start that the distribution system serving Albany would not be capable of handling the increased load on a peak-demand day without adding capacity. Ordinary diligence and prudence dictated that the problem should be addressed immediately, including seeking approval for the project from the Commission. However, Gasco did not meet with Commission Staff until November 8, 1999, eight days after commencing the project.<sup>4</sup> On November 17, 1999, the Commission received a letter from Gasco, requesting that the project be approved as an extension in the ordinary course of business.<sup>5</sup> In the letter, Gasco described the

---

<sup>2</sup> Case No. 99-501, Order dated March 21, 2000.

<sup>3</sup> Transcript of Evidence ("T.E.") at 45.

<sup>4</sup> T.E. at 6.

<sup>5</sup> T.E., Joint Exhibit 1, at 60.

project and stated that the cost of construction would be financed out of the company's cash flow and that Gasco "did not intend to seek an increase in its existing rates at this time for [the] project." Gasco's letter left open the possibility that it might seek a rate increase to pay for the project at a later date. After reviewing the request, Commission Staff issued an advisory opinion on November 24, 1999, stating that the project did not qualify as an extension in the ordinary course of business and that Gasco required a certificate. The Staff based its opinion on a determination that "the extension involves a material capital outlay and may result in increased charges to customers." See 807 KAR 5:001, Section 9(3).

On November 29, 1999, Gasco renewed its request, but this time Gasco stated that it would not raise its rates to pay for the construction. Gasco's letter was followed on December 1, 1999 by a letter from its attorney, describing how Gasco intended to pay for the project with internal funds. On December 3, 1999, Staff responded that the project did not qualify as an extension in the ordinary course of business for the same reasons stated previously. Gasco then applied for a certificate on December 15, 1999.

There are good reasons for the legislature's requirement that a utility obtain a certificate when it wishes to undertake major construction of new or additional plant, not the least of which are safety concerns. Commission Staff must review the construction project to determine if it complies with the regulations for construction and safety.

The Commission is mindful of circumstances that require a utility to act with urgency upon a construction project. In addition, certain circumstances require that applications before the Commission receive expedited treatment. The Commission is willing to consider expedited treatment of an application when the application merits

such treatment and is in compliance with the filing requirements of the statutes and regulations. Any request for expedited treatment must be based upon good cause. Utilities may utilize the provisions of 807 KAR 5:001, Section 4(4), to obtain conferences with Staff and present the exigent circumstances necessitating expedited treatment of an application. However, in this case there appeared to be neither a sense of urgency nor a request for expedited treatment until after construction had commenced.

Gasco knowingly and intentionally began construction of the pipeline extension at the direction of its President, Fred A. Steele, without first obtaining a certificate from the Commission. The Commission recognizes that extenuating circumstances exist in that the school required heat. However, better planning on Gasco's part, together with more meaningful involvement of the Commission at an earlier stage of that planning, would have permitted Gasco to provide service to the school while remaining within the confines of the law. Because Gasco's conduct, as well as that of its President, was willful within the meaning of KRS 278.990(1), the penalties prescribed by the statute apply.

Having reviewed the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. Gasco has willfully violated KRS 278.020(1) by constructing the facilities without having first obtained a Certificate of Public Convenience and Necessity from the Commission.

2. Fred A. Steele willfully violated KRS 278.020(1) by causing Gasco to construct the facilities without having first obtained a Certificate of Public Convenience and Necessity from the Commission.

3. Charles D. Hercher, as vice president of operations, has aided and abetted Gasco in its violation of KRS 278.020(1) by constructing the facilities without having first obtained a Certificate of Public Convenience and Necessity from the Commission, but Mr. Hercher's action was taken at the direction of his supervisor. Accordingly, his action was not willful and no civil penalty should be assessed against him.

IT IS THEREFORE ORDERED that:

1. For its willful violation of KRS 278.020(1), Gasco is assessed a penalty of \$2,500, pursuant to KRS 278.990(1). Gasco shall pay \$500 with 10 days of date of this Order. The balance of \$2,000 shall be probated for a period of 5 years from the date of this Order, provided there are no further violations and Gasco timely performs the following:

a. Within 15 days of the date of this Order, Gasco shall file as-built drawings of the pipeline.

b. Within 30 days of the date of this Order, Gasco shall file construction specifications of the pipeline.

c. Within 30 days of the date of this Order, Gasco shall file copies of the certificates to join plastic pipe for the individuals who performed the butt fusion of the pipe and a copy of procedures used.

d. Within 30 days of the date of this Order, Gasco shall file copies of all pressure test records performed on this pipeline.

e. Within 30 days of the date of this Order, Gasco shall file a copy of all inspection and/or progress reports on this pipeline.

2. At the request of a Commission inspector, Gasco shall uncover such sections of pipeline as that inspector shall deem necessary to determine if the pipeline is in compliance with Commission regulations for construction and safety.

3. Fred A. Steele, President of Gasco, for his conduct in directing Gasco's willful violation of KRS 278.020(1), is assessed a penalty of \$2,500, pursuant to KRS 278.990(1). Mr. Steele shall pay \$500 within 10 days of the date of this Order. The balance of \$2,000 shall be suspended for a period of 5 years from the date of this Order, provided Mr. Steele does not direct Gasco to commit further violation of Commission statutes and regulations.

4. Charles D. Hercher, vice president of operations, not having been found in willful violation of KRS 278.020(1), is dismissed as a party in this matter.

5. The penalties assessed in this Order, except for those portions that are suspended as described herein, are payable, within 10 days of the date of this Order, to the Kentucky State Treasurer, by cashier's check, mailed or delivered to the Office of General Counsel, Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.

Done at Frankfort, Kentucky, this 19<sup>th</sup> day of October, 2000.

By the Commission

ATTEST:

Deputy W. H. Fowler  
Executive Director