COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

NATURAL ENERGY UTILITY CORPORATION COMPLAINANT V. COLUMBIA GAS OF KENTUCKY, INC. DEFENDANT	))))))))	CASE NO. 2003-00422

O R D E R

Natural Energy Utility Corporation ("NEUC") has filed a formal complaint against Columbia Gas of Kentucky ("Columbia") regarding Columbia's proposed construction of facilities to serve a customer that NEUC presently serves. The case before us presents the following issue: Is the proposed construction an extension in the ordinary course of business that does not require a Certificate of Public Convenience and Necessity ("Certificate")? Finding that the proposed construction is not an extension in the ordinary course of business and that Columbia has not obtained a Certificate for it, the Commission directs Columbia to refrain from construction of any facilities to serve the customer in question without obtaining a Certificate.

STATEMENT OF THE CASE

NEUC is a Kentucky corporation that owns and operates facilities that distribute natural gas to approximately 938 customers in Boyd and Greenup counties, Kentucky.[1]

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[1] Report of NEUC to the Public Service Commission of Kentucky for the Year Ending December 31, 2003 at 0.

For calendar year 2003, it had total revenues of $1,575,867 from sales of 162,807 Mcf of natural gas.[2] Of its 938 customers, all but two are residential customers. The remaining two customers accounted for 55.9 percent of NEUC's total sales and 54.4 percent of NEUC's total sales revenues.[3]

Columbia is a Kentucky corporation that owns and operates facilities that distribute natural gas to approximately 95,433 customers in 33 counties in central and eastern Kentucky. For calendar year 2003, it had total revenues of $111,910,025 on sales of 10,778,478 Mcf of natural gas. Columbia has 9,595 commercial customers, 113 industrial customers, and 2 wholesale customers. The remaining customers are residential customers.[4]

Hyland Company is a Kentucky corporation that is located in Boyd County, Kentucky. It produces dry dog and cat food and employs 18 employees. In 1991 NEUC's corporate predecessor, Kentucky-Ohio Gas Company, constructed a 3-inch gas main extension to serve Hyland Company at a cost of $60,680.[5] Hyland Company did not bear any of this cost. Hyland Company has been a contract customer of NEUC or its corporate predecessor since 1991. It is currently served under a special contract. In calendar year 2003, Hyland Company purchased approximately 16,720 Mcf of

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[2] Id.

[3] Id.

[4] FERC Form 2: Annual Report of Major Natural Gas Companies - Columbia Natural Gas of Kentucky for the Year 2003 at Additional Information Pages 1 and 4.

[5] NEUC Response to Commission Staff Hearing Request, Items 1 and 2.

natural gas from NEUC.[6] NEUC estimates that it would suffer lost revenues of $189,278 if Hyland Company ceased its purchases of natural gas.[7]

In August 2003, Hyland Company began exploring possible natural gas service from Columbia. Columbia has distribution facilities within 1,200 feet of Hyland Company's property. After preparing a cost-benefit study, Columbia in September 2003 advised Hyland Company that it could construct a 1,200-foot gas main extension at no cost to Hyland Company to provide natural gas service and could provide natural gas service at a more favorable rate.[8] On September 30, 2003, Hyland Company notified NEUC that it was terminating its contract for natural gas service in 90 days.[9] During the same period, it advised Columbia to proceed with plans to provide service to its manufacturing site. Columbia made preparations for the construction and obtained an encroachment permit from the Kentucky Department of Transportation for the construction. Columbia estimates the total cost of the proposed construction to be $28,818.[10] Columbia states that it had not been aware of NEUC's objections to Hyland Company's efforts, that it ceased all construction efforts upon learning of those objections, and that no construction of the proposed main extension has occurred.[11] As

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[6] NEUC Response to the Commission's Order of February 19, 2004, Item 1.

[7] Id. at Item 4.

[8] Transcript of Hearing at 32.

[9] NEUC Response to Commission Staff's First Request for Information, Item 4.

[10] Columbia's Response to the Commission's Order of January 15, 2004 at Item 4.

[11] Columbia's Answer at 2; Transcript of Hearing at 34.

of this date, Columbia has not obtained a Certificate for the facilities necessary to serve Hyland Company.

PROCEDURE

On September 30, 2003, NEUC filed with the Commission a formal complaint against Columbia in which it alleged that Columbia was constructing facilities to serve Hyland Company. It requested that the Commission determine whether Columbia's proposed actions would interfere with or duplicate NEUC's service or facilities and that the Commission direct Columbia to cease such activities. Answering the Complaint, Columbia denied constructing any facilities to serve Hyland Company, but affirmatively stated that, as such construction would be in the ordinary course of business, it was not required to obtain a Certificate.

Following discovery requests from Commission Staff, the Commission directed each party to submit a written brief to the Commission on the issue of wasteful duplication of facilities. On March 23, 2004, following the submission of written briefs, the Commission held a hearing on the Complaint. The following persons testified: Harvey Jay Freeman, NEUC's President; Judy Cooper, Columbia's Director of Regulatory Affairs; and Gary Cook, Hyland Company's Accounts/Office Manager.

DISCUSSION

The issue before us is whether Columbia's proposed extension to Hyland Company is an ordinary extension of an existing system in the usual course of business for which no Certificate is required.

KRS 278.020 limits the construction that a utility may undertake without obtaining prior Commission approval. It states:

> No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010, except retail electric suppliers for service connections to electric-consuming facilities located within its certified territory and **ordinary extensions of existing systems in the usual course of business**, until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.

KRS 278.020(1) (emphasis added). While exempting ordinary extensions from any requirement for Commission approval, the General Assembly did not define "ordinary extensions."

To define "ordinary extensions," the Commission promulgated Administrative Regulation 807 KAR 5:001, Section 9(3), which provides:

> Extensions in the ordinary course of business. No certificate of public convenience and necessity will be required for extensions that do not create wasteful duplication of plant, equipment, property or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general area in which the utility renders service or contiguous thereto, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

Under this definition, an extension is in the ordinary course of business if it (1) does not result in sufficient capital outlay to materially affect the constructing utility's financial condition or require an increase in the constructing utility's rates; (2) does not conflict with the service of a jurisdictional utility operating within the same area; and (3) does not result in wasteful duplication of plant.

The evidence of record clearly shows that the proposed extension will not materially affect Columbia's financial condition. Columbia's witness testified that its extension of service to Hyland Company would not have any affect on its rates.[12] The cost of the proposed extension is $28,818. Columbia's total net utility plant as of December 31, 2003 was $130,829,026.[13] The construction represents approximately .022 percent of the utility's total net plant and .277 percent of its annual construction budget.[14] Columbia projects that revenue from its service to Hyland Company will offset any required capital costs.[15]

The parties dispute whether Columbia's proposed service conflicts with NEUC's current service and facilities. NEUC argues that a conflict clearly results since it has facilities in the area and currently serves Hyland Company. It notes that it will be significantly affected by the loss of that customer. Columbia counters that natural gas utilities do not have certified or certificated service areas, that Hyland Company is equally accessible to both utilities, and that consideration should be given to Hyland Company's preferences and desires.[16]

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[12] Transcript of Hearing at 37.

[13] FERC Form 2: Annual Report of Major Natural Gas Companies - Columbia Natural Gas of Kentucky for the Year 2003 at 200.

[14] Columbia's annual construction budget is $10.4 million. See Transcript of Hearing at 39.

[15] Columbia's Response to the Commission's Order of January 15, 2004 at Item 4.

[16] Columbia Brief at 7.

While Kentucky law does not establish exclusive service territories for natural gas utilities, the Commission has recognized that such utilities have general service areas and that another utility's extension into that area cannot be considered an extension in the ordinary course. In Columbia Natural Gas of Kentucky, Case No. 1996-00015 (Ky. PSC July 10, 1996), Columbia sought to construct a gas main to serve a customer in an industrial park that Delta Natural Gas Company ("Delta") already served. Rejecting Columbia's contention that the extension was in the ordinary course, the Commission stated:

> Columbia's proposed extension will conflict with Delta's existing service in the area as Delta presently serves existing customers within and immediately adjacent to the industrial park. Since the construction will duplicate Delta's existing facilities and will interfere with Delta's existing obligation to serve the industrial park, the extension is clearly not in the ordinary course.

Id. at 4.

The present case is even more compelling than that of Case No. 1996-00015. NEUC is presently serving the customer to which Columbia is seeking to extend its service. Clearly, Columbia's proposed construction will conflict with NEUC's existing service.

Having determined that Columbia's proposed construction would conflict with NEUC's present service to an existing customer, we need not address the further issue of wasteful duplication. We find sufficient evidence to demonstrate that the proposed construction is not an ordinary extension of an existing system in the usual course of business and that KRS 278.020(1) requires Columbia to obtain a Certificate prior to commencing such construction.

SUMMARY

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that Columbia's construction of the proposed facilities to provide natural gas service to Hyland Company is not an ordinary extension of an existing system in the usual course of business and requires a Certificate.

IT IS THEREFORE ORDERED that Columbia shall not construct any facilities to provide natural gas service to Hyland Company until obtaining a Certificate for such facilities.

Done at Frankfort, Kentucky, this 1st day of September, 2004.

By the Commission

ATTEST:

Robert A Amato for the

Executive Director