

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC CECIL JARRELL)
D/B/A SLICK ROCK GAS COMPANY) CASE NO. 2020-00258
REQUEST TO ABANDON)

ATTORNEY GENERAL'S BRIEF AND NOTICE REGARDING HEARING

The intervenor in this proceeding, the Attorney General of the Commonwealth of Kentucky, through his Office of Rate Intervention (“Attorney General”), submits the following Hearing Notice and Brief to the Public Service Commission (“Commission”) in the above-styled matter.

NOTICE REGARDING HEARING

Pursuant to the Commission’s Order of March 29, 2021, the Attorney General provides notice that he does not request a formal hearing be set in this matter.

BRIEF

Slick Rock Gas (“Slick Rock”) provides natural gas service to six residential customers.¹ The Commission informed Mr. Jarrell, Slick Rock’s operator, by a warning letter on April 28, 2020, that Slick Rock was operating as a gas distribution utility and potential violations of Commission regulations and the pipeline safety standards on the part of the utility had been documented.² In response, Mr. Jarrell informed the Commission that he could not afford to complete the required upgrades.³ As such, he

¹ Order of August 13, 2020 at 2.

² *Id.*

³ *Id.*

proposed to cease charging the customers for gas service.⁴ The Commission initiated this investigation to review Slick Rock's operation and determine a path forward.⁵

The Attorney General asserts that Mr. Jarrell has not met the standard for approval of abandonment, but if the Commission intends to find that abandonment has occurred and intends to seek appointment of a receiver, it should fully consider the circumstances of the residential customers in making such a determination.

I. Mr. Jarrell's request for abandonment of a utility does not meet the standard for approval.

Abandonment of a utility requires the prior approval of the Commission.⁶

No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, *or abandon the same*, without prior approval by the commission. *The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.*

Mr. Jarrell has failed to present any evidence to the Commission supporting a conclusion that anyone, let alone someone with, "the financial, technical, and managerial abilities to provide reasonable service," will acquire the utility. Thus, approval of his request for abandonment is not compelled by KRS 278.020(6).

II. Mr. Jarrell arguably meets the standard for finding that abandonment occurred, if, and only if, the Commission intends to seek the appointment of a receiver to operate the utility.

Alternative criteria for considering a utility abandoned is found at KRS 278.021(2).

(2) For purposes of this section, a utility shall be considered abandoned if it:

⁴ *Id.*

⁵ *Id.*

⁶ KRS 278.020(6) (emphasis added).

- (a) Disclaims, renounces, relinquishes, or surrenders all property interests or all rights to utility property, real or personal, necessary to provide service;
- (b) Notifies the commission of its intent to abandon the operation of the facilities used to provide service;
- (c) Fails to comply with an order of the commission in which the commission determined that the utility is not rendering adequate service, specified the actions necessary for the utility to render adequate service, and fixed a reasonable time for the utility to perform such actions, and the failure of the utility to comply with the order presents a serious and imminent threat to the health or safety of a significant portion of its customers; or
- (d) Fails to meet its financial obligations to its suppliers and is unable or unwilling to take necessary actions to correct the failure after receiving reasonable notice from the commission, and the failure poses an imminent threat to the continued availability of gas, water, electric, or sewer utility service to its customers.

However, the criteria found in KRS 278.021(2) specifically govern whether a utility may be considered abandoned, “[f]or the purposes of this section.” “[T]his section” is appropriately construed as KRS 278.021, which deals strictly and exclusively with the procedures and standards to be observed if the Commission elects to bring an action in Franklin Circuit Court to have a temporary receiver to conduct the operations of the utility. If the provision had been intended to apply more broadly than to KRS 278.021, the General Assembly would have referred to its application to KRS Chapter 278.

If the Commission intends to apply the criteria of KRS 278.021(2) in order to perfect the basis for the appointment of a receiver, subsections (a), (c), and (d) are inapplicable to the facts here.⁷ In response to Data Requests propounded by the Commission Staff and the Attorney General, and with the assistance of his son, Mr. Jarrell indicated that he

⁷ Note also that KRS 278.021(1) allows the Commission to enter an order that a utility is abandoned for the purposes of appointing a receiver only after notice “and hearing.”

owns the gas well and pipeline.⁸ With regard to subsection (a), Mr. Jarrell has presented no evidence that he has or intends to “disclaim, renounce, relinquish, or surrender all property interests.... necessary to provide service.” With regard to subsection (c), Mr. Jarrell has indicated he does not intend to perform the necessary repairs to the system, but the Commission has yet to enter an order determining that he has failed to render adequate service.⁹ With regard to subsection (d), there is no evidence that the utility has failed to meet financial obligations. Therefore, the only relevant inquiry is whether the Commission has been notified that the utility intends to abandon operation of the facilities used to provide service under KRS 278.021(2)(b).

Undoubtedly, Mr. Jarrell indicated that he will “shut [the utility] down,” if he is required to complete the required upgrades.¹⁰ The utility however, is required to meet all applicable legal requirements in order to ensure the safety of the residents who utilize the service and those who happen to be in the vicinity. Thus, the upgrades specified previously by the Commission are necessary. Mr. Jarrell’s proposed accommodation that the residents be allowed to continue to utilize the service for free, if he is not required to perform those upgrades, is insufficient to meet the public protection aims of the regulatory scheme.¹¹ Thus, the issue becomes whether Mr. Jarrell has stated his intent to abandon facilities used to provide services and whether that compels or, alternatively, merely allows the Commission to determine that the utility has been abandoned.

⁸ Response to Staff DR 1-2 entered into the docket on September 29, 2020.

⁹ *Id.* at PSC DR 12.

¹⁰ *Id.*

¹¹ *Id.* at PSC DR 11.

The Commission previously held that, if one or more of the criteria in KRS 278.021(2) were met, the Commission had no discretion and was required to consider the utility abandoned.¹² However, the General Assembly subsequently changed the standard when it enacted KRS 278.021(9):

Nothing contained in this section shall be construed as requiring the commission to approve an application made pursuant to KRS 278.020(6) for authority to abandon a utility or other assets of a utility or to cease the provision of utility service.

Thus, the “shall” in KRS 278.021(2) does not compel the Commission to approve abandonment of a utility in a preapproval proceeding under KRS 278.020(6). To the contrary, the “shall” in KRS 278.021(2) is only applicable when the Commission seeks the appointment of a receiver. Therefore, the Commission should, within its discretion, carefully consider all ramifications and aspects of the case before granting any approval of an abandonment request, including the cost of proposed upgrades, whether financing is available to complete those upgrades, and whether those upgrades are best undertaken by Mr. Jarrell or a receiver appointed by the Commission pursuant to KRS 278.021(1).

The Commission would be within its discretion to either (1) deny Mr. Jarrell’s request to abandon based on his failure to meet the requirements of KRS 278.020(6), or (2) acknowledge the intent to abandon the utility under KRS 278.021(2)(b) and seek appointment of a receiver. Importantly, and by Mr. Jarrell’s own admission, the utility customers cannot afford alternative service.¹³ Therefore, the Commission should

¹² Order of September 19, 2016, *In the Matter of: Ridgelea Investments, Inc. Notice of Surrender and Abandonment of Utility Property Namely Three (3) Franklin County Wastewater Treatment Plants*, Case No. 2016-00106.

¹³ See Response to AG DR 4 and 19.

thoroughly consider which outcome allows the customers to continue to receive service at a reasonable rate. The Attorney General is not blind to the fact that this case involves a tension between the private property rights of Mr. Jarrell and the basic needs of those to whom he has provided utility service. What he initially may have provided as a service, incidental to the operation of a gathering system out of kindness to his neighbors at some point, may have become a burden for him. However, the system is required to meet the applicable utility laws for the purpose of ensuring public safety. To the extent Mr. Jarrell's goodwill to his neighbors may be considered in order to craft an affordable and fair solution for all concerned, the Commission should take his goodwill into account.

Respectfully submitted,

DANIEL J. CAMERON
ATTORNEY GENERAL

A handwritten signature in blue ink that reads "J. Michael West". The signature is fluid and cursive, with a horizontal line extending from the end of the name.

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Certificate of Service and Filing

Pursuant to the Commission's Orders dated March 16, 2020 and March 24, 2020 in Case No. 2020-00085, and in accord with all other applicable law, Counsel certifies that, on April 13, 2021, a copy of the forgoing was served by regular mail to the following. A physical copy of the filing will be submitted to the Commission once the State of Emergency has ceased.

Cecil Jarrell
d/b/a Slick Rock Gas Company
3375 KY RT 321
Prestonsburg, KY 41653

this 13th day of April, 2021.

A handwritten signature in blue ink, appearing to read "J. Michael New". The signature is written in a cursive style with a long horizontal stroke at the end.

Assistant Attorney General