



customer is not a party. However, the record is undisputed that the decision to terminate service with Columbia and seek service from NEUC was not initiated by NEUC, was not based on any inducements or incentives by NEUC and was not solicited by NEUC. See NEUC Response 18 filed March 29, 2010, NEUC Response 5 to Columbia's Second Request filed April 26, 2010, NEUC's Response 7 to Staff Second Request filed April 26, 2010 and NEUC Response 1 to Staff Request filed March 29, 2010. The record also shows that the customer's rate will actually increase upon transfer of service to NEUC. See NEUC Responses 5, 6 and 7 to Staff Requests filed April 26, 2010.

From February, 2009 to the filing of the complaint by Columbia on August 21, 2009, neither the customer nor NEUC heard anything from Columbia about the termination request. Without any effort by Columbia to resolve the matter with either the customer or NEUC, Columbia filed a complaint against NEUC. For reasons that remain unclear, Columbia attacked NEUC, yet its customer's termination request is the issue. Rather than address the customer's dissatisfaction, Columbia chose to attack NEUC on an unrelated pipeline repair issue. As a result, NEUC has been forced to defend at significant cost a minor pipeline replacement unrelated to the customer's effort to terminate service with Columbia.

#### **ORDINARY EXTENSION ISSUE**

The basis of Columbia's complaint is that NEUC extended a pipeline to enable it to serve the disputed customer's three businesses located in a strip "mall" and that NEUC did not get prior Commission approval for the extension as

required by KRS 278.020. Neither assumption is correct. The record is undisputed that in 2007 NEUC was contacted by Mr. Watson about relocating an existing pipeline to accommodate some future development in the area. NEUC has had a steel pipeline located in the area of Bryan Street, which runs through the “mall” property owned by the customer that is the center of this dispute. The line that traverses the “mall”, serves customers outside the “mall” through a connection to an NEUC gas well. NEUC Response 1 to Staff’s First Request; Response 1 to Staff’s Second Request; Response 2 to Columbia’s Initial Request. The pipeline that Columbia claims is a new extension is in fact part of NEUC’s distribution system within Ashland and is an integral part of the distribution system in the city. The map filed as exhibit 2 to NEUC’s Answer clearly shows that NEUC has customers served from that pipeline and that it has customers in the immediate vicinity of the “strip mall” where the customer’s businesses are located. In fact, NEUC could have served the “mall” property with the existing steel pipeline. Freeman Testimony, pages 5-6.

The surveys and plats prepared by Matrix Engineering provide the only evidence as to the location of that pipeline. See exhibits 1, 2 and 4 of NEUC’s Answer filed September 8, 2009. The steel line has been in existence and operational in providing residents in the area natural gas since at least 1929. See Freeman Testimony, pages 2-3. The maps show that the existing NEUC pipeline traverses the “mall” property where the customer’s three business are located.

The request of Mr. Watson in 2007 to relocate a portion of this pipeline is unrelated to the issue of the termination of service by Columbia's customer. After several delays, Mr. Watson finally gave the approval to proceed with the relocation in 2009. As described by Mr. Freeman, President of NEUC, the pipeline was moved due to the relocation of a driveway. Freeman Testimony page 5. A more detailed description of the relocation is provided in NEUC Response 3 to the Staff's Second Request, filed April 26, 2010.

While relocating the pipeline for Mr. Watson, NEUC decided to replace a portion of the existing steel pipeline that had been operating since 1929. That replacement consisted of approximately 580 feet of plastic pipe, which was installed on the same property as the existing steel line. Freeman Testimony, page 5. The plans prepared by Matrix Engineering show that the new plastic line is parallel to and adjacent to the existing steel line. Response 3 to Staff Second Request. Contrary to Columbia's assertions, the replacement pipeline is in the same location as the existing steel pipeline and is located on the customer's "mall" property.

While this replacement project was underway, NEUC installed service taps on the new plastic line on the customer's property. At that time Columbia had not responded to the customer's termination of service request or told NEUC of its intentions to object to that termination. As far as everyone involved was aware, the customer would be allowed to terminate service. Based on the information available, NEUC determined that it would be more cost effective to install the service taps while the area was excavated, rather than covering the

new pipeline and then digging the trench a second time solely for the purpose of placing the service taps for the customer. This work was completed on August 5, 2009. Response 4 to Columbia's Initial Request and NEUC Response 9 to Staff's Second Request. It was not until Columbia filed the complaint against NEUC on August 21, 2009, that anyone knew of its refusal to accommodate its customer's termination of service request. The customer was not connected to the NEUC taps and they remain unused. The mere presence of unused service taps is of no harm to Columbia.

Columbia objects to NEUC's activity based on a violation of the ordinary extension regulation:

807 KAR 5:001(9)(3) 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.

NEUC has not violated any aspect of the regulation. There is no wasteful duplication because an existing pipeline used to provide service to NEUC customers was replaced with a comparable sized plastic pipeline to serve the same customers in the same area. Wasteful has been defined as meaning an excess of capacity over need as well as an excessive investment in relation to productivity or efficiency and an unnecessary multiplicity of physical properties.

Kentucky Utilities Company v. Public Service Commission, Ky., 252 S.W.2d 885 (1952). “This statutory standard, as defined by the courts, is the standard which guides the Commission... “Application of Kentucky CGSA, Inc. for a Certificate of Convenience and Necessity to Construct a Cell Site”, Case No. 96-081, Order of February 4, 1997, p.5. Certainly, the action by NEUC does not meet this standard. An old pipeline was replaced with a new safer one. There is no excess capacity over existing or expected future needs.

The next issue is conflict with the certificate of an existing utility. The pipeline that was replaced has been in operation since 1929. The record does not reflect the age of Columbia’s facilities in the area. However, it is undisputed that both Columbia and NEUC have facilities and customers in the area.

Replacing a functioning pipeline with a safer, more reliable pipeline does not conflict with Columbia’s certificate. The replacement pipeline was installed for the benefit of NEUC’s existing customers and to eliminate a potentially unsafe cathodic protection problem that had existed in the area for some time. NEUC Response 12 to Columbia’s Initial Request.

The cost of the pipeline replacement is only \$2371.00. NEUC Response 5 to Columbia’s Initial Request. NEUC has operating revenues of approximately \$2M annually, so this modest amount is hardly a sufficient capital outlay to materially affect its financial condition. It will have no impact on rates or lead to a rate change. Nothing in Columbia’s complaint or the information provided as proof of its claim substantiate a violation of any of the factors of 807 KAR 5:001(9)(3).

## CUSTOMER SERVICE

Because Columbia cannot prove that NEUC violated the ordinary extension regulation, its only recourse is to punish its customer by refusing to allow it to terminate service. Obviously, any customer that wants to terminate service to obtain service from another provider at a higher rate must have significant reasons for doing so. The record shows that the customer has NEUC service at another location and that the rate on those bills exceeds Columbia's.

Columbia cannot cite any right stemming from its certificate of convenience and necessity, its franchise or Commission order that allows it to prevent a customer from selecting its gas provider. As the Commission stated in "Mountain Utilities, Inc. v. Equitable Gas Company", Case No. 91-316, Order dated April 6, 1992:

Mountain misunderstands the purpose and effect of a Certificate of Convenience and Necessity. A certificate is required before the construction of any utility facilities which are not ordinary extensions of existing systems in the usual course of business. It is intended to prevent the wasteful duplication of utility facilities. It does not establish an exclusive service territory for the applicant utility. The certificates granted to Mountain and its predecessors, in fact, make no mention of an exclusive service territory but merely authorize the construction of a gas distribution system. This Commission is not authorized to establish exclusive service territories for natural gas utilities. See Kentucky Utilities Co., Inc. v. Pub. Serv. Comm'n, Ky, 390 S.W.2d 168, 175 (1965) (stating that existing utilities do not "have any right to be free from competition.")

If there are two competing utilities with facilities already in place on the customer's property, the Commission has allowed the customer to choose the

utility provider. In Case No. 92-489, "Columbia Gas of Kentucky, Inc. v. Kentucky-Ohio Gas Company", Order dated July 2, 1993, the Commission confirmed KOG's right to serve customers that had been customers of Columbia. KOG had facilities on the customers' property and needed only to install service lines to the customers to effectuate service - the same situation as in this case. In that case, the Commission said:

"KOG's proposed service to the apartment buildings does not constitute a physical bypass of Columbia which would require certification. The existence of competition between two utilities to serve these loads that are residential in nature and equally accessible to both utilities is not the kind of uneconomic bypass contemplated by Administrative Case No. 297. There would be no duplication of facilities other than service connections to the customers and no shifting of costs contrary to the public interest." "Columbia Gas of Kentucky, Inc. v. Kentucky-Ohio Gas Company", Case No. 92-489, Order of July 2, 1993, pp. 1-2.

This issue was also addressed by the Commission in Administrative Case No. 297, which states that where both utilities are serving in the vicinity and are equally situated to serve the customer, customer preference could be considered. See also "Columbia Gas v. Delta Gas/Cooper Tire", Case No. 96-015, Order of July 10, 1996.

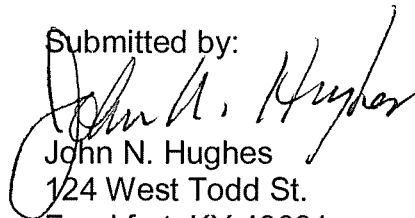
NEUC has been made the perpetrator in this action, when it is merely caught in the middle of a dispute among Columbia and its customer. NEUC did nothing to instigate the dissatisfaction with Columbia's service and did nothing to encourage the dissatisfaction. Only by virtue of the timing of a gas line replacement that was initiated as a result of a request of a third party that has no



involvement in this case is NEUC the target of Columbia's effort to force an unhappy customer to remain a customer. There is nothing in the record to indicate that Columbia has attempted to resolve the issues that have led to this effort to terminate service. Instead of making an effort to improve its customer relations, Columbia chose to attack NEUC. Obviously, the customer remains dissatisfied with Columbia because to the best of NEUC's knowledge, the request to terminate service has not been withdrawn.

For these reasons, the Commission should dismiss the complaint against NEUC.

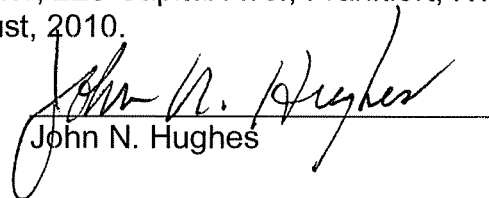
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Certification:

I certify that a copy of these Comments was served on Brooke Leslie, Box 117, Columbus, OH, 43216-0117 and Richard Taylor, 225 Capital Ave., Frankfort, KY 40601 by first class mail the 13<sup>th</sup> day of August, 2010.

  
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