

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF NATURAL ENERGY UTILITY)	
CORPORATION FOR APPROVAL OF)	CASE NO.
CONSTRUCTION OF A NATURAL GAS PIPELINE)	2017-00049
AND ISSUANCE OF A CERTIFICATE OF)	
CONVENIENCE AND NECESSITY)	

ORDER

On January 10, 2017, Natural Energy Utility Corporation (“NEUC”) filed for Commission approval of a Gas Service Agreement (“Agreement”) with a new industrial customer through the Commission’s electronic Tariff Filing System. On January 24, 2017, NEUC filed with the Commission an application for a Certificate of Public Convenience and Necessity (“CPCN”) authorizing it to construct a 3.1-mile gas pipeline (“Project”) to serve the industrial customer. NEUC’s application included the Agreement, which was suspended through July 8, 2017, by Commission Order issued February 8, 2017. NEUC responded to one Commission Staff request for information. There are no interveners, and the case is now submitted for a decision based on the evidence of record.

BACKGROUND

NEUC is a Kentucky corporation with its principal place of business located in Ashland, Kentucky. It distributes and sells natural gas in Boyd, Greenup, and Carter

counties in Kentucky.¹ Pursuant to KRS 278.010(3)(b), NEUC is a utility regulated by the Commission.

Pursuant to the Agreement, NEUC is to construct a natural gas pipeline that will serve the new industrial customer and will allow NEUC to provide service to additional residential customers. NEUC states that the Project will be financed entirely by the customer, and that it is required and in the public interest because it is necessary to provide adequate service to the customer. NEUC requests confidential treatment of the details of the pipeline construction and route, the identity of the customer, the contract rates, and certain other information contained in the Agreement submitted for Commission approval.

ANALYSIS

In support of its application, NEUC provided Project maps, drawings, plans, and work specifications certified by a professional engineer. NEUC states that the construction of the pipeline will begin upon Commission approval, and that the customer desires gas service beginning June 1, 2017. NEUC provided a copy of its application for a Kentucky Transportation Cabinet encroachment permit, which NEUC states is the only permit the Project will require. NEUC further states that the Project will not require franchises or easements, and that rights-of-way are pending for public roads. Construction is to be performed by NEUC staff and contractors. The Project is to be financed by the customer, with no need for external financing, and rates to other customers will not be affected.² NEUC will procure natural gas to serve the customer,

¹ Application at paragraph 3.

² Id., paragraphs 6, 7, and 9.

the cost of which will not impact NEUC's quarterly Gas Cost Recovery rate for its system supply.³

LEGAL STANDARD

NEUC's request for approval of the Project is pursuant to KRS 278.020(1), which provides, in relevant part, that:

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 services enumerated in KRS 278.010 . . . 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.

807 KAR 5:001, Section 15(2), provides in part:

New construction or extension. Upon application for a certificate that the present or future public convenience or necessity requires, or will require, the construction or extension of any plant, equipment, property, or facility, the applicant, in addition to complying with Section 14 of this administrative regulation, shall submit with its application:

(a) The facts relied upon to show that the proposed construction or extension is or will be required by public convenience or necessity.

To obtain a CPCN, the utility must demonstrate a need for such facilities and an absence of wasteful duplication.⁴

³ NEUC's response to Commission Staff's First Request for Information ("Staff's First Request"), Item 5.a.

⁴ Kentucky Utilities Co. v. Pub. Serv. Comm'n, 252 S.W.2d 885 (Ky. 1952).

“Need” requires:

[a] showing of a substantial inadequacy of existing service involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed and operated.

...

The inadequacy must be due either to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business; or to indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service.⁵

“Wasteful duplication” is defined as “an excess of capacity over need” and “an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties.”⁶ To demonstrate that a proposed facility does not result in wasteful duplication, we have held that the applicant must demonstrate that a thorough review of all alternatives has been performed.⁷ Selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.⁸

The Commission finds that NEUC’s request for a CPCN for the Project does not duplicate any existing facilities and is necessary in order for NEUC to accommodate current and expected system requirements for safe and reliable natural gas service.

⁵ *Id.* at 890.

⁶ *Id.*

⁷ Case No. 2005-00142, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky* (Ky. PSC Sept. 8, 2005).

⁸ See *Kentucky Utilities Co. v. Pub. Serv. Comm’n*, 390 S.W.2d, 175 (Ky. 1965). See also Case No. 2005-00089, *Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity to Construct a 138 kV Transmission Line in Rowan County, Kentucky* (Ky. PSC Aug. 19, 2005).

Based upon the record and being otherwise sufficiently advised, the Commission finds that a CPCN for construction of the pipeline should be approved and that, no later than 90 days after the completion of the Project, NEUC should file with the Commission a statement of the actual costs of the construction.

The Commission notes that, while it cannot divulge the terms of the Agreement, NEUC submitted in its Application, and through the process of discovery, information demonstrating that the Agreement and associated rates and terms as proposed 1) cover the cost of the construction as well as the on going costs to serve the customer, 2) do not impact the rates of other customers, and 3) will enable gas service in an area where customers currently do not have access to gas service. The Commission therefore finds that the Agreement should be approved.

IT IS THEREFORE ORDERED that:

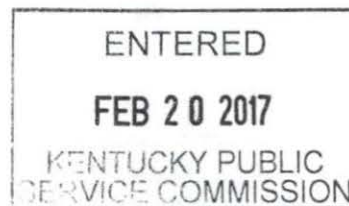
1. The Agreement is approved as filed.
2. NEUC is granted a CPCN for the Project as set forth in the application.
3. NEUC shall provide a copy of the required Kentucky Transportation Cabinet permit within ten days of obtaining it.
4. NEUC shall, no later than 90 days after the completion of the construction, file with the Commission a statement of the actual costs of the construction.
5. NEUC shall file a copy of the "as-built" drawings and a certified statement from the engineer that the construction has been satisfactorily completed in accordance with the plans and specifications within 60 days of substantial completion of the construction certified herein.

6. NEUC shall require the construction to be inspected under the general supervision of a professional engineer licensed to practice in the Commonwealth of Kentucky in civil or mechanical engineering to ensure that the construction work is done in accordance with the drawings and specifications and in conformity with the best practices of the construction trades involved in the Project.

7. NEUC shall notify the Commission one week prior to the actual start of construction and at the 50 percent completion point.

8. Any documents filed pursuant to ordering paragraphs 3, 4, 5, and 7 of this Order shall reference the number of this case and shall be retained in the utility's general correspondence file.

By the Commission



ATTEST:

Andrew D. Grunwell
Executive Director *for*

*Honorable John N Hughes
Attorney at Law
124 West Todd Street
Frankfort, KENTUCKY 40601

*Natural Energy Utility Corporation
2560 Hoods Creek Pike
Ashland, KY 41102