

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

By Order entered August 13, 2020, the Commission initiated an investigation into the intent of Cecil Jarrell d/b/a Slick Rock Gas Company (Slick Rock) to cease operating as a jurisdictional gas distribution utility. By Order entered September 22, 2020, the Commission granted the motion of the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General), for full intervention, and authorized Commission Staff (Staff) and the Attorney General to serve data requests on Slick Rock. The Attorney General served data requests on September 29, 2021, and Staff served data requests on October 1, 2021. Slick Rock filed responses to the requests on November 19, 2020.

By Order entered March 29, 2021, the Commission gave the parties 15 days to request a formal hearing on Slick Rock's application, and provided that if no request for a hearing was filed, this matter would stand submitted for a decision on the record. The Commission also gave the parties 15 days to file a brief on Slick Rock's request to abandon utility operations. Neither party requested a formal hearing. The Attorney General filed a brief on March 29, 2021. Slick Rock did not file a brief, and this matter stands submitted for decision on the record.

BACKGROUND

Cecil Jarrell is the owner of a natural gas well and line located along Route 321 in Prestonsburg, Kentucky, and has operated the facilities to distribute gas at retail to customers with taps on his line. He first filed a tariff for gas service with the Commission in April of 1987, establishing a flat rate for gas service in the amount of \$15 per month during the summer and \$30 per month during the winter. The tariff has never been revised.

Slick Rock filed its first annual report with the Commission in 1992, in which it reported total operating revenues in the amount of \$7,560.00 from residential sales to 13 customers. The 1992 report does not list any assets, liabilities, or expenses.

Subsequent annual reports similarly provided only limited financial information about the utility. The reports show that the number of customers dropped from 13 to 11 by the end of 2003, and to 8 by the end of 2005. Annual reports for 2006 through 2018, the last year for which Slick Rock filed an annual report, show residential customers remaining at 8, with total operating revenue in each year in the amount of \$2,565.00.

As a natural gas distribution utility, Slick Rock is subject to the Commission's jurisdiction under KRS 278.495 to enforce federal minimum pipeline safety standards. On January 16, 2020, members of Staff from the Commission's Division of Inspections conducted a preliminary inspection of Slick Rock's gas pipeline and related facilities. Staff observed a single well feeding a pipeline extending approximately ½ mile to the southwest along Slick Rock Branch Road. The pipeline is both above and below grade, and six service connections were observed. The pipeline is not connected to any other facilities.

Staff observed several potential violations of Commission regulations and pipeline safety standards. Staff observed, for example, that there were no customer meters,¹ and that plastic customer service lines had been installed above ground.²

By Warning Letter dated April 28, 2020, the Commission's Executive Director gave Slick Rock notice of Staff's preliminary findings and advised Slick Rock that if it intended to continue to operate as a gas distribution utility, Slick Rock would have to bring its system into compliance with all applicable Commission safety standards or potentially face assessment of civil penalties under KRS 278.990 and KRS 278.992. The Executive Director also advised that if Slick Rock could not bring the system into compliance and decided to cease operating a gas distribution utility, KRS 278.020(6) would require the Commission's prior approval to abandon utility service.

By letter to Staff dated May 18, 2020, Cecil Jarrell stated that he could not afford the upgrades that would be required to continue to operate as a gas distribution utility. He further stated he had decided that as of June 1, 2020, he would stop charging a fee for gas furnished from his well to the residences connected to his line. Based on this letter, the Commission by Order dated August 13, 2020, opened this proceeding to examine Slick Rock's current operations and Cecil Jarrell's apparent intent to cease operating as a jurisdictional gas distribution utility.³

The Commission also directed Staff to conduct an informal conference with Cecil Jarrell. The informal conference was held by phone on September 1, 2020. Woody

¹ 807 KAR 5:022, Section 3(1)(a), requires that all gas sold by a utility in Kentucky to be metered by a measuring meter.

² 49 C.F.R. § 192.375(a) requires each plastic service line to be installed below ground.

³ The Warning Letter and Cecil Jarrell's response are attached to the August 13, 2020 Order.

Jarrell (W. Jarrell), Cecil Jarrell's son, appeared on his father's behalf. W. Jarrell said his father is nearly 80 years of age and has granted him a power of attorney to handle his affairs, including Slick Rock. Representatives of the Attorney General also participated in the conference.

On November 19, 2020, W. Jarrell filed responses on behalf of his father to the data requests of the Attorney General and Staff. W. Jarrell confirmed in the responses that there are six customers still being furnished natural gas from Slick Rock's facilities, but that since June 1, 2020, they have not been charged by Slick Rock for the gas.⁴ W. Jarrell stated that his brother Jim Jarrell lives on the property with the well and maintains it and the line without charge to the other users of the gas.⁵ W. Jarrell confirmed that the gas is naturally odorized.⁶

The data response lists the name and address of the six customers receiving gas from Slick Rock's facilities.⁷ According to W. Jarrell, the customers use the gas for heating and cooking.⁸ He stated that four of the six customers are on fixed income and that they cannot afford higher rates for service.⁹ W. Jarrell stated he told them that as of June 1, 2020, his father would let them "use [the gas] for free until the PSC decided something," but if his father is required to make upgrades to the system, he will have to

⁴ Slick Rock's Response to Commission Staff's Initial request for Information (Staff's Initial Request), Item 4.

⁵ *Id.*, Item 7.

⁶ *Id.*, Item 9.

⁷ Slick Rock's Response to the Attorney General's First Data Requests, Item 1 (attachment). In addition to Woody Jarrell's brother Jim, two of the other six listed customers share the last name of "Jarrell."

⁸ *Id.*, Item 2.

⁹ Slick Rock's Response to Staff's Initial Request, Note.

shut it down.¹⁰ W. Jarrell stated his father only draws social security and “can’t afford to do upgrades plus there’s no money to be made.”¹¹ W. Jarrell indicated that Slick Rock does not plan to relinquish ownership or control of the gas facilities.¹²

ATTORNEY GENERAL’S BRIEF

The Attorney General makes two arguments in his brief. First, the Attorney General argues that Slick Rock’s request to abandon does not meet the statutory standard for approval.¹³ The Attorney General notes that under KRS 278.020(6), abandonment of a utility requires the prior approval of the Commission. The Attorney General argues that the statute requires the person seeking the Commission’s approval to show that “the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service,” and that Slick Rock has failed to make this showing.

Next, the Attorney General addresses application of KRS 278.021 to Slick Rock’s situation. KRS 278.021(1) provides that if the Commission finds a utility is abandoned, it may bring an action in the Franklin Circuit Court for attachment of the utility’s assets and appointment of a receiver. Subsection (2) sets for the criteria for finding that a utility is abandoned:

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

¹⁰ *Id.*, Item 11.

¹¹ *Id.*, Note.

¹² *Id.*, Item 13.

¹³ Brief of Attorney General at 2.

- (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.

These criteria are for determining whether a utility is considered abandoned “[f]or purposes of this section,” i.e., for purposes of determining whether the Commission is authorized to seek appointment of a receiver for a utility pursuant to KRS 278.021. As the Attorney General notes, the General Assembly amended the statute in 2016 to provide that “[n]othing 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.”¹⁴ Thus, a finding that a utility is abandoned for purposes of appointment of a receiver does not require the Commission to approve the abandonment under KRS 278.020(6). Nor

¹⁴ *Id.* at 5.

does a finding of abandonment require the Commission to seek receivership of the utility's assets.

The Attorney General argues that the facts of this case do not warrant a finding of abandonment under KRS 278.021(2)(a), (c), or (d), and that 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” within the meaning of KRS 278.021(2)(b).¹⁵ The Attorney General argues that if the Commission finds that Slick Rock is abandoned for purposes of KRS 278.021, it should seek appointment of a temporary receiver in the Franklin Circuit Court to conduct the operations of the utility and protect the interests of those served by the utility.¹⁶

FINDINGS

Slick Rock owns and operates facilities that are used to distribute natural gas to the public. Up until June 1, 2020, Slick Rock did so for compensation pursuant to a gas distribution tariff on file with the Commission. The Commission finds that Slick Rock held itself out as willing to provide natural gas service to the public, and that Slick Rock is therefore a utility within the meaning of KRS 278.010(3)(b). As a utility, Slick Rock is subject to KRS 278.020(6), which provides:

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.

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 5.

The statute's use of "shall" makes prior Commission approval mandatory.

KRS 278.010(3)(b) defines a utility, in relevant part as, "any person . . . who owns, controls, operates, or manages any facility used or to be used for or in connection with" the "production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas . . . to or for the public, **for compensation**" (Emphasis added.)¹⁷ Thus, in general, for an entity to be considered a utility and subject to the Commission's jurisdiction, it must meet two tests: (1) the provision of service to or for the public; and (2) compensation for the provision of service.

At the outset, the Commission notes that according to W. Jarrell, Slick Rock has no plans to relinquish ownership or control of the gas well or pipeline. Slick Rock has continued to allow the residents connected to the system to use gas from Slick Rock's well and has indicated it will continue to do so unless the Commission orders Slick Rock to make upgrades to the system, in which case Slick Rock would shut down its system. Slick Rock seeks to cease being regulated as a utility by "abandoning" its right to charge rates for furnishing gas to the six residents.¹⁸ The Commission is unaware of any precedent that addresses application of 278.020(6) to this particular factual scenario.¹⁹

¹⁷ KRS 278.010(3)(b).

¹⁸ A person who owns and operates facilities used to distribute natural gas to the public meets the statutory definition of a "utility" only if it distributes the gas "for compensation." KRS 278.010(3)(b).

¹⁹ The Commission, however, has held that a utility no longer met the definition of a jurisdictional utility because of a change, either in structure or in its provision of service, that led the utility to no longer be providing service "to or for the public." See Case No. 93-315, *The Application of Verna Hills Neighborhood Association, Inc. for an Order Authorizing Verna Hills Ltd. to Transfer Its Assets to Applicant and for Determination of Jurisdictional Status* (Ky. PSC Sept. 16, 1993). See also Case No. 2020-00013, *Removal of Bush Gardens Enterprises, LLC from Public Service Commission Jurisdiction* (Ky. PSC Jan. 24, 2020).

Based on the data responses of Slick Rock, the Commission finds that as of June 1, 2020, Slick Rock ceased charging for natural gas service, but allowed the customers connected to the system to continue to use the gas produced by the single well. The Commission finds that Slick Rock's action to remove itself from the Commission's jurisdiction by surrendering its right to receive compensation for providing gas service is tantamount to abandonment within the meaning of, and subject to, KRS 278.020(6). The Commission further finds that although Slick Rock gave advanced notice to the Commission of its intent, it took this action without receiving the Commission's approval in violation of KRS 278.020(6).

Although the plain language of the statute is clear that prior Commission approval is required to abandon a utility, there is nothing in the statute that addresses the consequences of transferring or abandoning a utility without prior Commission approval. The statute does not provide that such a transfer or abandonment is void *ab initio*, nor does it prohibit the Commission from considering a request for approval after abandonment has occurred. Therefore, the Commission will consider whether approval of abandonment is warranted in these circumstances.

As noted, the Attorney General argues on the merits that because Slick Rock failed to present evidence that someone with the requisite abilities to provide reasonable service will acquire the utility, Slick Rock failed to meet the statutory standard for approval of abandonment. The Commission, however, finds that the qualification requirement in the statute applies to the transfer of ownership or control of a utility by one person to another. It has no application in the case of abandonment where no person is acquiring or taking control of the utility.

In this case, the Commission finds that it is simply unrealistic for Slick Rock to continue to operate as a jurisdictional natural gas distribution utility. It is unrealistic to expect that the six customers of Slick Rock could ever afford to pay the rates that would be necessary to finance not only a complete overhaul of the Slick Rock system, but the ongoing expenses of operating and maintaining the system in compliance with federal pipeline safety standards. The Commission also finds that it would be unreasonable and unrealistic to expect Cecil Jarrell, who is in his 80s, is on a limited, fixed income, and has granted a power of attorney to his son to handle his affairs, to handle such a significant undertaking.

For these reasons, the Commission finds that Slick Rock's request to abandon the provision of regulated, natural gas service by relinquishing the right to charge rates for the service should be approved. The Commission's holding in this matter is strictly limited to the unique facts of this situation.

The Commission also declines to pursue appointment of a receiver of the system pursuant to KRS 278.021 notwithstanding its finding of abandonment under KRS 278.020. KRS 278.021(1) provides that upon a finding of abandonment under KRS 278.021(2), the Commission "may" seek appointment of a receiver in the Franklin Circuit Court and is thus permissive. The Commission declines to seek appointment of a receiver for the same reason that it grants approval for Slick Rock to abandon regulated service: regardless of whether Cecil Jarrell or a court-appointed receiver operates the system, the end-users cannot afford to pay rates sufficient to overhaul the system and operate it in compliance with federal pipeline safety standards.

As noted, Slick Rock last filed an annual report with the Commission in 2018. The Commission thus finds that as a condition of its approval that Slick Rock be required to file annual reports for 2019 and 2020.

The Commission continues to have very serious concerns about the capability of Slick Rock's gas system to safely furnish gas to the six end users. So long as Slick Rock does not furnish gas for compensation, however, the line and well will be considered non-jurisdictional private facilities. The Commission lacks the authority to regulate private facilities that are used to distribute gas provided no fee is charged.

The Commission finds that as a condition of its approval of abandonment, Slick Rock should provide written notice to the end-users that the Commission no longer regulates the safety of its gas distribution facilities. The notice should also state that Slick Rock is prohibited from charging for gas service unless it applies for and receives authorization from the Commission to do so.

Finally, the Commission notes that a person who transfers or abandons a utility without prior Commission approval in violation of KRS 278.020(6) could be subject to penalties under KRS 278.990. In these circumstances, however, particularly in light of the goodwill Cecil Jarrell has shown and the significant financial investment and increase in rates necessary to maintain Slick Rock as a public utility, the Commission finds that assessment of a penalty would be unreasonable.

IT IS HEREBY ORDERED that:

1. Slick Rock's request to abandon the provision of natural gas utility service is approved, contingent upon:

a. Slick Rock filing with the Commission within 30 days of the date of this Order annual financial reports for the years 2019 and 2020;

b. Slick Rock providing within 30 days of the date of this Order written notice to the six residents connected to its pipeline and receiving gas from its well that the Kentucky Public Service Commission no longer regulates the safety of the pipeline system; and

c. Slick Rock providing within 30 days of the date of this Order written notice to the six residents connected to its pipeline and receiving gas from its well that Slick Rock is prohibited from charging for gas service unless it applies for and receives prior Commission approval.

2. Slick Rock shall file a copy of the written customer notice within 30 days of the date the notice is provided to the customers.

3. Any documents filed pursuant to ordering paragraphs 1 or 2 shall reference this case number and shall be retained in the post-case correspondence file.

4. This case shall be closed and removed from the Commission's docket.

By the Commission

Vice Chairman Kent A Chandler did not participate in the deliberations or decision concerning in this case.



ATTEST:


Executive Director

Case No. 2020-00258

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