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Klinton W. Alexander
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RECEIVED

DEC 02 2010

PUBLIC SERVICE
COMMISSION

November 30, 2010

VIA FEDERAL EXPRESS

Public Service Commission
Attn: Linda Faulkner, Director-Filings Div.
211 Sower Blvd.
Frankfort, Kentucky 40602-0615

**RE: Joint Application of Navitas KY NG, LLC and Gasco Distribution Systems, Inc.
for Approval of an Acquisition of Ownership and Control of Gas Utility Systems**

Dear Ms. Faulkner:

Enclosed is an original and eleven copies of the above referenced Joint Application for Approval of an Acquisition of Ownership and Control of Gas Utility Systems along with attached Exhibits A - I. We have also enclosed a self-addressed and postage paid return envelope for you to return a file stamped copy of the Joint Application to me for our files. We will remit, under separate cover, the original verification and signature pages upon receipt.

Please note Exhibits B and I are marked "CONFIDENTIAL." The "CONFIDENTIAL" exhibits have been marked as such and placed in separate envelopes marked accordingly. The Applicants request that the Authority treat these exhibits - the Redacted Asset Purchase Agreement and Amendment and the 2009 Federal and State Income Tax Returns and Independent Auditor's Report - Confidential, as marked, and that these documents not be made available for the public to review. Should anyone seek to view the documents, the Petitioners request an opportunity to further protect them from disclosure and, if necessary, seek a protective order.

Please contact me if you have any questions.

Sincerely yours,

Klinton W. Alexander
Counsel for Navitas Assets, LLC

KWA/cl
Enclosures

cc: Jack Conway, Esq.
Helen Helton, Esq.
Richard Collier, Esq.

45409279.1

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
DEC 02 2010
PUBLIC SERVICE
COMMISSION

In the Matter of:)
)
THE JOINT APPLICATION OF NAVITAS)
KY NG, LLC AND GASCO)
DISTRIBUTION SYSTEMS, INC. FOR)
APPROVAL OF AN ACQUISITION OF)
OWNERSHIP AND CONTROL OF GAS)
UTILITY SYSTEMS)

Case No. _____

JOINT APPLICATION

COMES NOW, Joint Applicants Navitas KY NG, LLC¹ ("Navitas"), by and through counsel, and Gasco Distribution Systems, Inc.² ("Gasco"), through its duly authorized officer, and hereby requests, pursuant to KRS 278.020(5) and (6), an Order from the Kentucky Public Service Commission (the "Commission") for approval of the acquisition of ownership and control of a certain gas utility system from Gasco to Navitas in Albany, Clinton County, Kentucky. The proposed acquisition and transfer of control will occur, subject to the approval of the Commission and other regulatory agencies, under the terms of the Asset Purchase Agreement dated July 9, 2010 and Amendment dated October 14, 2010, by and between Gasco and Navitas. A copy of the redacted Agreement and Amendment thereto are attached hereto as **Exhibit B** and marked **CONFIDENTIAL**.

The proposed acquisition and transfer of control satisfies the requirements of KRS 278.020(5) and (6). For the reasons set forth below in this Application, the proposed acquisition and transfer of control will be made by a person with the financial, technical and managerial

¹ A Corporate Resolution of Navitas Assets, LLC assigning all rights and privileges under the Asset Purchase Agreement to Navitas is attached hereto as **Exhibit A**.
² While this is a joint application, the representations concerning Navitas and NALLC as defined herein are made by them, the representations made by Gasco are made by it, and the representations made with respect to the bankruptcy of Gasco and the sale of its assets to NALLC or Navitas are jointly made by the parties.

abilities to provide reasonable service, it will be made in accordance with law and for a proper purpose, and it will be consistent with the public interest. The Applicants respectfully request that the Commission accept the filing of this Application and enter a final order approving the proposed acquisition and transfer of control as expeditiously as possible pursuant to KRS 278.010(6).

In support of this Application, the Applicants state as follows:

I. THE APPLICANTS

1. Navitas KY NG, LLC (“Navitas”) is a Kentucky limited liability company. Navitas’ principal place of business is 18218 East McDermott, Irvine, California 92614. Navitas Assets, LLC (“NALLC”) is the parent company of Navitas and is a Delaware limited liability company.

2. Gasco Distribution Systems, Inc. (“Gasco”) is an Ohio Corporation with its principal place of business located at 4445 East Pike, Zanesville, OH 43701. Gasco owns and operates facilities that distribute and furnish natural gas to approximately 134 customers in Albany, Kentucky. It is authorized to operate within the Commonwealth of Kentucky and is a utility subject to Commission jurisdiction.

II. FACTUAL AND PROCEDURAL BACKGROUND

3. On February 16, 1995, the Commission entered an order approving Gasco’s acquisition of Albany Gas Utility Company and its Application for a Certificate of Public Convenience and Necessity (“CCN”) to provide local gas distribution service to Albany, Kentucky.

4. In conjunction with the approval of the CCN to provide utility services in Albany, Kentucky, Gasco was assigned certain franchise agreements with the City of Albany and Clinton

County. True and exact copies of the franchise agreements and accompanying ordinances authorizing such agreements are attached hereto as **Exhibit C**.

5. On June 1, 2009, Gasco filed for Chapter 11 bankruptcy protection – Case No. 09-056171 - in the United States Bankruptcy Court for the Southern District of Ohio, Eastern Division. Gasco has been operating as a Debtor in Possession since that time.

6. In December 2009, NALLC began the process to bid on Gasco's utility distribution system's assets in the bankruptcy proceeding, which included the Albany, Kentucky System, as well the Jellico, Tennessee System, the Byrdstown and Pickett County, Tennessee Systems and some customers in Fentress County, Tennessee ("Gasco Utility Systems").

7. By Agreement dated July 9, 2010 and amended on October 14, 2010 (collectively the "APA"), Gasco agreed to sell, and NALLC agreed to purchase the assets in the Gasco Utility System, subject to the approval of the applicable regulatory authorities, including the Commission, and to the Bankruptcy Court's approval. The proposed sale will result in a change in ownership of the Gasco Utility Systems. The gas system is comprised of customers and master meters, mains and regulators, pipelines, easements, rights-of-way, tools, equipment, supplies and other personal property used in the operation of the gas utility system.

8. On October 21, 2010, the Bankruptcy Court entered an Order authorizing and approving NALLC's bid (as set forth in the APA) to acquire the Gasco Utility Systems in Kentucky, which included the Albany, Kentucky System, as well the Jellico, Tennessee System, the Byrdstown and Pickett County, Tennessee Systems. A true and exact copy of the Bankruptcy Court Order awarding NALLC its bid for the Gasco Utility Systems in Kentucky and Tennessee is affixed hereto as **Exhibit D**.

9. On November 17, 2010, the Navitas TN NG, LLC, (a sister entity to Navitas and also a wholly owned subsidiary of NALLC) and Gasco filed a Joint Petition with the Tennessee Regulatory Authority for approval of control and transfer of authority from Gasco to Navitas TN NG, LLC of the Jellico Utility System³, and the Byrdstown and Pickett County Utility Systems, which include some customers in Fentress County, in Tennessee. A copy of the Joint Petition is attached hereto as **Exhibit F**. That Petition is pending before the Tennessee Regulatory Authority.

III. DISCUSSION

10. The Navitas companies have the requisite managerial and technical expertise to own and operate the Gasco Utility Systems. The Navitas companies have extensive knowledge and expertise in operating a rural regulated gas utility by virtue of its ownership of Fort Cobb Fuel Authority, LLC in Oklahoma. The Navitas companies are also familiar with federal and state, including Commission, utility regulations and currently work closely with the Oklahoma Corporation Commission and the Federal Energy Regulatory Commission (“FERC”) to maintain properly functioning and legally compliant rural utility systems in Oklahoma.

11. Similar to the structure of many utilities, the Navitas companies are comprised of two sister entities, Navitas Utility Corporation (“NUC”) and NALLC. A diagram of the corporate structure of the Navitas companies is attached hereto as **Exhibit G**. NALLC is a holding company created to retain certain energy assets. NUC is an operating entity primarily engaged in providing necessary support services for the operations of NALLC. Both companies are owned by the same two shareholders – Mr. Thomas Hartline and Mr. Richard Varner (though

³ By Order of the Public Service Commission, Commonwealth of Kentucky, dated August 13, 1990, Gasco Distribution Systems, Inc.’s service to Kentucky residents in Kentucky Hill and Black Oak in Whitley County, Kentucky is effective under the jurisdiction of the Tennessee Regulatory Authority, as part of the Jellico Distribution System. A true and exact copy of the Kentucky Public Service Commission Order is attached hereto as **Exhibit E**.

with differing percentage interests). The vitae's of Messrs. Varner and Hartline are attached hereto as **Exhibit H**.

12. NALLC is the parent company of Fort Cobb Fuel Authority, LLC ("FCFA"), a regulated natural gas utility in Oklahoma. FCFA is comprised of two divisions, the original Fort Cobb utility which includes certain recent acquisitions and the LeAnn Gas Company division derived from a utility acquisition in Northeast Oklahoma. In addition, FCFA has three subsidiaries, Navitas OK3, derived from an acquisition in Southwest Oklahoma, Navitas-WinStar, a joint venture project to construct a new gas system in South central Oklahoma, and Navitas 1. The assets in NALLC and its subsidiaries include regulated and unregulated pipelines, office locations, the right-to-serve in the form of approved tariffs from the Oklahoma Corporation Commission, and certain other assets. NALLC currently serves approximately 4,600 customers in rural Oklahoma.

13. NUC is the operating entity for the assets of NALLC and its subsidiaries. NUC provides the employees, the rolling stock, the computers and information systems, insurance, and other equipment & activities for operating the assets of NALLC. These operating services are provided at a contractually preset amount, billed monthly, and reviewed regularly. Since its first acquisition in 2007, NUC has been consolidated into the books of NALLC. With no utility operations outside of Oklahoma there has been no jurisdictional allocation. However, in the latest rate filing submitted September 30, 2010 with the Oklahoma Corporation Commission (Cause No. PUD 201000026), NUC used its standard allocation method to distribute its costs to the various NALLC divisions and subsidiaries in Oklahoma. As both Mr. Hartline and Mr. Varner are members of the Chickasaw Nation, NUC is a minority business enterprise certified by the California Public Utilities Authority.

14. For operations in Tennessee and Kentucky, NALLC will replicate the structure used in Oklahoma. NALLC has formed two companies, Navitas TN NG, LLC and Navitas KY NG, LLC in Tennessee and Kentucky, respectively. As with FCFA, NUC will contract to operate these utility assets. Due to the travel time between Jellico, TN and the Byrdstown, TN/Albany, KY systems, NUC intends to retain field service personnel in each location. The initial expectation is that the current Gasco employees servicing the systems will be retained. Currently, Gasco *rents* facilities in Jellico, Tennessee and Byrdstown, Tennessee; whereas, the Navitas companies will seek to *purchase* facilities in Jellico, Tennessee and Albany, Kentucky. Billing will be moved from Gasco's corporate offices in Ohio to NALLC's affiliate, FCFA's Eakly, Oklahoma operational headquarters. NUC is currently in the process of obtaining the records in order to set up the Tennessee and Kentucky customers in its system. Accounting and regulatory compliance will be handled out of NALLC's Irvine, California office. Meter proving will begin and be handled by the Eakly, Oklahoma meter shop. A review of equipment and retooling of the field offices will be undertaken immediately upon closing the acquisition. As NUC has done with its eight previous acquisitions, a company representative will be dispatched to work alongside the local employees during the transition process to assist with integration into its systems. NALLC and NUC's expectation is that this process will take several weeks involving multiple trips to each location.

15. NALLC and NUC have the requisite financial stability to operate the Gasco systems. NALLC and NUC are not publicly held companies, and therefore its 2009 Federal and State Income Tax Returns and Independent Auditor's Report are confidential and are being provided herewith as **Exhibit I** marked '**CONFIDENTIAL.**'

16. The acquisition of the Gasco Utility Systems, including the system in Albany, Kentucky, is not intended to result in any changes to the local personnel in Kentucky. Gasco's employees in Kentucky and Tennessee possess extensive managerial and technical experience and are expected to be retained. As stated previously, all bookkeeping, billing and other functions will be provided by NALLC employees in Eakly, Oklahoma and in Irvine, California where its corporate offices are located.

17. Navitas intends to adopt the existing tariffs of Gasco on file with the Commission and will subsequently file a separate proceeding to revise the rates, terms and conditions of service of the utility.

18. The Kentucky utility portion of the Gasco Utility Systems will operate under the name of Navitas KY NG, LLC.

19. Certain current liabilities and contractual obligations to which Gasco is bound relating to the Gasco Utility Systems, such as executory contracts, and consumer deposits and credits will transfer to NALLC as set forth in the APA. All franchise agreements, licenses, permits, rights-of-way, and authorizations under which Gasco will conduct its business will transfer to NALLC.

20. The gas suppliers and transporters will not change as a result of the acquisition. However, given Gasco's status as a chapter 11 debtor in possession and questionable financial condition, there is a real concern that one or more of its suppliers may stop providing gas to Gasco's customers in the near future. Thus, it is critical that this Application be reviewed and a decision rendered expeditiously, before January 1, 2011 if possible – the peak time for gas use, to ensure a smooth transition with the gas supplier and transporter.

21. Once the acquisition and transfer of control is approved, Navitas will be in close contact with the Commission to ensure safe, reliable gas service is not interrupted to the rural customers it seeks to serve.

22. Navitas' shareholders have read and understand all of the Commission's current gas service rules applicable to Gasco, and they will continue to abide by the rules. Navitas understands that if it does not abide by the Commission's rules it may be subject to penalties.

23. Navitas' members are familiar with the Commission's Pipeline Safety Division and will work closely with the Commission's personnel to ensure that the system is maintained properly, the gas system is checked regularly for leaks and damage, and meters are checked to ensure that safe reliable gas service is provided to its customers.

24. Navitas will submit to the Commission *all* annual reports and other filings in a timely fashion.

25. Navitas states that to the best of its knowledge, it is in good standing in Oklahoma and all annual reports and monthly fuel filings and reports required by the authorities there are current. At present, Fort Cobb Fuel Authority in Oklahoma has no outstanding fines, public utility fee assessments or other deficiencies that have been identified by the Oklahoma Public Utility Division or Consumer Services Division.

26. Approving the transfer of control and authority of the Gasco systems to Navitas is in the public interest and will enhance the rural communities in which it serves. NALLC and its affiliates are committed to the rural communities in which it serves and helps to ensure that these communities stay viable. For example, when NALLC's affiliate purchased the Velma Municipal system in Velma, Oklahoma, it purchased an abandoned building on the main street of downtown which has been completely remodeled for a local office. This has spurred other

businesses to improve their buildings in the downtown area of Velma. Too, when NALLC's affiliate acquired the Rimrock system in Southwest Oklahoma, it purchased another local office which has contributed to economic development in the rural town of Hollis, Oklahoma. At NALLC's affiliate, FCFA's main headquarters in Eakly, Oklahoma, an abandoned school was purchased which is used as the main headquarters for personnel and equipment. After being totally refurbished, the former cafeteria of that school has been rented to a local resident who now runs a restaurant for local farmers and residents.

27. NALLC and its affiliate Navitas are committed to assisting and keeping rural communities viable and have shown this through their investment in rural America. While many large utilities are not interested in investing in rural areas as they are more expensive to serve due to density of customer base, NALLC understands the importance of preserving rural communities and is committed to ensuring that these communities continue to thrive. Navitas plans to purchase and open local offices for its Kentucky customers in its proposed serving area, employing local residents and improving the quality of life of the people there. Accordingly, this request to approve the transfer of control of Gasco's assets is in the public's interest.

28. Approval of this Application in an expeditious manner, and if possible prior to January 1, 2011 (the peak month for gas use), is also in the public interest due to Gasco's questionable financial condition. As discussed above, Gasco is in bankruptcy in Ohio and its ability to pay its supplier and continue providing utility services to Kentucky customers is problematic at present. Once the acquisition and transfer of control is authorized, NALLC itself and through its affiliates stands ready to act to ensure that its Kentucky customers receive safe reliable natural gas service immediately. NALLC and its affiliate Navitas have the resources and the managerial and technical expertise to ensure a smooth transition and that the expectations of

its suppliers and customers are met. As the winter months fast approach, it is critical that Navitas be authorized to step in and provide natural gas service as soon as possible and that the effected communities benefit from its presence.

29. Notices and Communications Regarding the Application should be sent to:

Klint Alexander, Esq. (#20420)
Wyatt, Tarrant & Combs, LLP
2525 West End Avenue
Suite 1500
Nashville, TN 37203
(615) 244-0020
kalexander@wyattfirm.com

Ron Comingdeer, OBA#1835
Mary Kathryn Kunc, OBA#15907
Ron Comingdeer & Associates
6011 N. Robinson
Oklahoma City, Oklahoma 73118
(405) 848-5534
Facsimile: (405) 843-5688
hunter@comingdeerlaw.com
mkkunc@comingdeerlaw.com

Counsel for the Navitas Companies

Fred Steele, President
Gasco Distribution Systems, Inc.
4445 East Pike
Zanesville, Ohio 43701
Facsimile: (740) 454-7780

WHEREFORE, Applicants request that the Commission enter a final order as follows:

1. Finding that after the acquisition of the Gasco Utility Systems currently owned by Gasco Distribution Systems, Inc. by Navitas, Navitas will have the suitability, the financial responsibility, and the capability to perform efficiently the utility services to be transferred, and

that the transfer of control and authority to Navitas to provide retail natural gas utility services will benefit the consuming public and will further the public interest;

2. Approving the acquisition and transfer of control from Gasco Distribution Systems, Inc. to Navitas, including its authority to provide utility services in Albany, Kentucky deriving from its Certificate of Public Convenience and Necessity in Albany, Kentucky, and related orders, approvals and actions of the Commission pursuant to KRS 278.020(5) and (6);

3. Approving the acquisition and transfer of control and authority to provide utility services in Albany, Kentucky prior to January 1, 2011 in order for the gas service to customers to continue throughout the winter months; and

4. Granting all other necessary or appropriate authorizations and further relief.

Dated this the 30th day of November, 2010.

Respectfully Submitted,



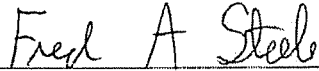
Klint W. Alexander (#20420)
Wyatt, Tarrant & Combs, LLP
2525 West End Avenue, Suite 1500
Nashville, TN 37203
(615) 244-0020
kalexander@wyattfirm.com

- and -

Ron Comingdeer, OBA#1835
Mary Kathryn Kunc, OBA#15907
Ron Comingdeer & Associates
6011 N. Robinson
Oklahoma City, Oklahoma 73118
(405) 848-5534
hunter@comingdeerlaw.com
mkkunc@comingdeerlaw.com

Counsel for Navitas Assets, L.L.C.

- and -



Fred Steele, President
Gasco Distribution Systems, Inc.
4445 East Pike
Zanesville, Ohio 43701

Gasco Distribution Systems, Inc.

LIST OF EXHIBITS

- Exhibit A NALLC's Corporate Resolution assigning all rights under the Asset Purchase Agreement to Navitas
- Exhibit B Redacted Asset Purchase Agreement and Amendment
(**CONFIDENTIAL** – Filed under seal)
- Exhibit C Franchise Agreements and Ordinances authorizing Franchise Agreements between Gasco and the City of Albany and Clinton County
- Exhibit D UNITED STATES BANKRUPTCY COURT ORDER (A) APPROVING THE SALE OF SUBSTANTIALLY ALL OF DEBTOR'S UTILITY DISTRIBUTION SYSTEMS ASSETS TO SUCCESSFUL BIDDER AT AUCTION; (B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS; AND (C) GRANTING OTHER RELATED RELIEF, entered October 21, 2010 in Chapter 11 Case No. 09-056171
- Exhibit E Kentucky Public Service Commission Order dated August 13, 1990
- Exhibit F Joint Tennessee Petition with Non-confidential Exhibits
- Exhibit G Navitas Companies Corporate Structure Chart
- Exhibit H Management Biographies
- Exhibit I 2009 Federal and State Income Tax Returns and Independent Auditor's Report (**CONFIDENTIAL** – Filed under seal)

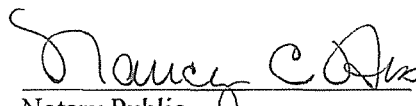
VERIFICATION OF NAVITAS KY NG, LLC

STATE OF OKLAHOMA)
)
COUNTY OF OKLAHOMA) ss.

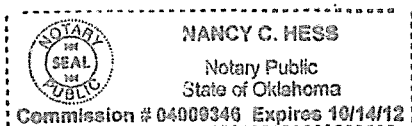
I, Thomas Hartline, Secretary of TN KY, LLC being first duly sworn according to law, makes oath and affirm that I have read the foregoing Joint Application, know the contents thereof, and that the same is true and correct to the best of my knowledge, information and belief.


THOMAS HARTLINE

Subscribed and sworn to before me, a Notary Public in and for the above County and State, on this 30 day of November, 2010.


Notary Public

My Commission Expires: 10/14/2012



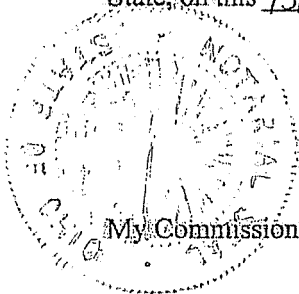
VERIFICATION OF GASCO DISTRIBUTION SYSTEMS, INC.

STATE OF Ohio)
)
COUNTY OF Muskingum) ss.

I, Fred Steele, President of Gasco Distribution Systems, Inc. being first duly sworn according to law, makes oath and affirm that I have read the foregoing *Joint Application of Navitas KY NG, LLC and Gasco Distribution Systems, Inc. for Approval of an Acquisition of Ownership and Control of Gas Utility Systems*, know the contents thereof, and that with respect to the representations on behalf of Gasco Distribution Systems, Inc., represents that the same is true and correct to the best of my knowledge, information and belief.

Fred A Steele
FRED STEELE

Subscribed and sworn to before me, a Notary Public in and for the above County and State, on this 1st day of December 2010.



Trina L King
Notary Public

My Commission Expires:

Trina L. King
Notary Public, State of Ohio
My Commission Expires 8-8-2012

SPECIAL MEETING OF THE MEMBERS

A special meeting of the Members of Navitas Assets, L.L.C. ("NALLC") was held on November 16, 2010 at 18218 East McDermott, Irvine, California at 9 o'clock 1.5., pursuant to the waiver of notice duly executed by the Members.

The meeting was called to order by Richard Varner, Chief Executive Officer (CEO), who presided, and Thomas Hartline, secretary, acted as secretary of the meeting.

Upon calling the roll the secretary reported that the following officers were present:

Richard Varner
Thomas Hartline

said persons being all of the directors.

The CEO declared a quorum of the officers to be present.

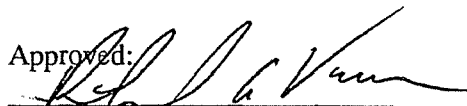
The chairman directed the secretary to annex to the minutes of this meeting the waiver of notice thereof.

The chairman presented the Asset Purchase Agreement dated July 9, 2010 and Amendment thereto dated October 14, 2010, wherein Gasco Distribution Systems, Inc. agreed to sell, and NALLC agreed to purchase the assets in Gasco's gas utility system subject to the approval of the Tennessee and Kentucky Utility Commissions. The chairman then presented, and the secretary then read to the meeting the following resolution. The proposed resolution was then fully discussed and, on motion duly made and seconded, the following resolution was unanimously adopted:

1. RESOLVED that NALLC, pursuant to the terms of the Asset Purchase Agreement as amended, assign all of its rights and privileges under the Agreement to Navitas TN NG, LLC and Navitas KY NG, LLC for their respective service areas in each state in order to provide natural gas service to customers.

There being no further business to come before this meeting, upon motion duly made, seconded and unanimously carried, the meeting adjourned.

Approved:



CEO



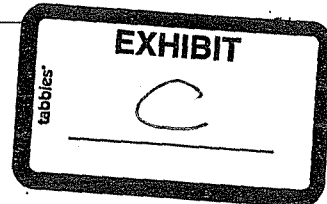
Secretary



EXHIBIT B

REDACTED ASSET PURCHASE AGREEMENT AND AMENDMENT

**(CONFIDENTIAL –
FILED UNDER SEAL)**



AGREEMENT

DATE: ^{March} February 7, 1986

PARTIES: ALBANY GAS UTILITY COMPANY,
a private corporation
P.O. Box 655 - Adams Dock Road
Albany, Kentucky 42602

("Albany Gas")

and

CITY OF ALBANY, KENTUCKY,
a municipal corporation
c/o City Building
Cross Street
Albany, Kentucky 42602

("the City")

* * * * *
WHEREAS, the City, on April 11, 1985, granted to Mid-Western
Oil and Exploration, the gas franchise for the City; and,

WHEREAS, Mid-Western Oil and Exploration has assigned the
City gas franchise to Albany Gas; and,

WHEREAS, both parties desire to make certain modifications in
their franchise arrangement, but only to the extent as set out
below.

The parties hereto agree as follows:

1. ~~Albany Gas hereby transfers and assigns to the City all of the pipeline and service meters which constitute the physical plant of Albany Gas.~~
2. The City hereby grants to Albany Gas an exclusive management contract, under which it shall do all things necessary to maintain and improve the pipeline and service. Albany Gas shall be in charge of and responsible for, all aspects of the gas business except as set out in numerical paragraph 3, below.
3. ~~The City of Albany will act as the rate making authority for all matters pertaining to the sale of natural gas under the terms of the natural gas franchise. The City Council of the City of~~

Albany must approve any change on rates and the setting of the initial rate for the sale of natural gas. The factors to be considered in setting rates will include but not be limited to:

(a) consideration of whether or not the rates are reasonable and just based upon comparison with the rates in cities of a comparable size and location; and,

(b) whether or not Albany Gas will be making a sufficient profit to allow it to provide an efficient and safe service to the citizens and businesses of the area; and,

(c) whether or not Albany Gas is making or will make a sufficient rate of return relative to the money and time invested in the project with consideration given to the initial risk involved in the project.

4. Albany Gas hereby guarantees the City (8%) eight percent of the gross receipts. This (8%) eight percent guaranteed profit on gross receipts shall be the only profit to be received by the City under this arrangement and it will replace the (1.5%) one and one-half percent stated in article 14 of the ordinance granting the franchise.

5. The City hereby sets the initial rates as follows:

USAGE PER MONTH	RATE
First 0-15 MCF'S	5.50
Next 16-50 MCF'S	5.40
Next 51-100 MCF'S	5.30
Next 101-450 MCF'S	5.25
Excess of 450-up MCF'S	5.20

There will be a minimum of \$7.50 on all bills each month.

The City acknowledges that the above rates are just and reasonable rates under current conditions and further agrees that these rates may never be adjusted downward for the term of the management agreement.

6. Albany Gas will continue to abide by all required safety guidelines and regulations as set forth by the Kentucky Public Service Commission and the National Pipeline Safety Act.

7. Albany Gas shall furnish the City evidence of insurance to provide adequate coverage for damage resulting from the operation or installation of the gas pipeline.

9. This agreement shall be in force for a period of 20 years, ~~and at the election of Albany Gas, for an additional 20 years.~~ *by [signature]*
If, however, an unreasonably low rate is set by the City at any time, and such rate is successfully challenged by Albany Gas in an appropriate forum, at the election of Albany Gas, this agreement may be terminated, with a reversion of all property transferred hereunder, to Albany Gas.

Further, should the Public Service Commission deem that this agreement does not remove Albany Gas from its rate-making jurisdiction, this agreement, at the election of Albany Gas, will terminate and the parties shall be returned to the status quo ante.

Nothing herein, however, shall alter any of the Parties' respective rights, duties and obligations under the base franchise agreement, except where specifically mentioned herein.

This 7th day of ~~February~~, 1986.
March

ALBANY GAS UTILITY COMPANY

by: *Garry L. Hill*
PRESIDENT

Sammy S. Bowles
MAYOR, CITY OF ALBANY, KENTUCKY
by authority of Ordinance 86-003,
enacted February 7, 1986.
March

COMMONWEALTH OF
KENTUCKY
CLINTON COUNTY FISCAL
COURT
ORDINANCE NO. 1995-GAS-I
FINAL ORDINANCE NOTICE

AN ORDINANCE RELATING
TO THE GRANTING OF NON-
EXCLUSIVE FRANCHISES FOR
THE CONSTRUCTION, MAIN-
TENANCE AND OPERATION
OF A NATURAL GAS SYSTEM
IN THE COUNTY OF CLINTON,
KENTUCKY FOR THE FUR-
NISHING AND SELLING OF
NATURAL GAS BY MEANS OF
SAID FACILITIES; AUTHORIZ-
ING ADVERTISEMENT FOR
BIDS AND PROVIDING FOR
THE SELL OF SAID FRAN-
CHISE/S IN CLINTON COUNTY
KENTUCKY

Notice is hereby given by the Fis-
cal Court of Clinton County, Ken-
tucky, that on June 15, 1995 the above
summarized ordinance was approved
and adopted by said Court. The full
text of the above referenced ordi-
nance is available for public inspec-
tion in the Clinton County, Kentucky
Clerk's Office.

CLINTON COUNTY FISCAL
COURT

BY: S/CHARLENE KING
Clinton County Judge/Executive

CERTIFICATION:

I, James M. Lawson, County At-
torney for Clinton County, Kentucky
do hereby certify that I prepared the
foregoing ordinance summary and
that same is a true and correct sum-
mary of Ordinance No. 1995-GAS-I.

S: James M. Lawson
County Attorney
Clinton County, Kentucky,
40-1c

Clinton County News

Thursday, June 20, 1996

CLINTON COUNTY NEWS

COMMONWEALTH OF
KENTUCKY
CLINTON COUNTY FISCAL
COURT
COUNTY ORDINANCE
1996-GAS-1
NOTICE

AN ENABLING ORDINANCE
RELATING TO PROVIDING FOR
THE GRANTING OF NONEXCLU-
SIVE FRANCHISE/S THROUGH
ONE OR MORE GRANTING
ORDINANCES FOR THE CON-
STRUCTION, MAINTENANCE
AND OPERATION OF A NATU-
RAL GAS SYSTEM; TO ENABLE
THE FRANCHISE/S TO FURNISH
AND SELL NATURAL GAS BY
MEANS OF SAID FACILITIES;
AUTHORIZING ADVERTISE-
MENT FOR BIDS AND AWARD-
ING OF FRANCHISE/S IN CLIN-
TON COUNTY KENTUCKY

Notice is hereby given by the Fiscal Court of Clinton County Kentucky, that the first reading of the above summarized ordinance will be considered on the 19th day of June, 1996 at 6:00 p.m. If approved at first reading, the second reading of said ordinance will be considered on the 20th day of June, 1996 at 10:00 a.m. All times set forth herein are CST, and the readings will take place at the Clinton County Courthouse, County Judge/Executive's Office, Albany, Kentucky, where a copy of the full text of the proposed ordinance is available for public inspection.

CLINTON COUNTY FISCAL
COURT

By: S:
CHARLENE KING,
Clinton County Judge/Executive

AT 10:30 A.M.

JUN 20 1996

CLINTON COUNTY FISCAL COURT
CLINTON COUNTY KENTUCKY
COUNTY ORDINANCE 1996-GAS-1

CLINTON COUNTY
SHELMORE
County Clerk

AN ENABLING ORDINANCE RELATING TO PROVIDING FOR THE GRANTING OF NONEXCLUSIVE FRANCHISE/S THROUGH ONE OR MORE GRANTING ORDINANCES FOR THE CONSTRUCTION, MAINTENANCE AND OPERATION OF A NATURAL GAS SYSTEM; TO ENABLE THE FRANCHISEE/S TO FURNISH AND SELL NATURAL GAS BY MEANS OF SAID FACILITIES; AUTHORIZING ADVERTISEMENT FOR BIDS AND AWARDING OF FRANCHISE/S IN CLINTON COUNTY, KENTUCKY

WHEREAS, the COUNTY OF CLINTON, COMMONWEALTH OF KENTUCKY is authorized by Sections 163 and 164 of the Constitution of the Commonwealth of Kentucky to establish one or more Nonexclusive Franchises within Clinton County, Kentucky and for the purpose of the franchisee/s constructing, maintaining and operating a natural gas system and selling natural gas within the Clinton County, Kentucky for the use and enjoyment of its citizens; and,

WHEREAS, Clinton County, Kentucky acting by and through Clinton County Fiscal Court, while not usurping the powers of the Public Service Commission of the Commonwealth of Kentucky to regulate such activities pursuant to KRS Chapter 27B, et seq., desires to establish certain guidelines for the operation of a natural gas system for the use and enjoyment of the citizens of Clinton County as well as granting authorization for bids for one or more Nonexclusive Franchises for same and providing for the enactment of one or more granting ordinances, pursuant to the conditions contained herein.

NOW, THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF COUNTY OF CLINTON COUNTY, COMMONWEALTH OF KENTUCKY, THAT,

CREATION OF FRANCHISE:

SECTION 1. That there is hereby created a Nonexclusive franchise (whether one or more) for installing, laying and maintaining gas lines and other necessary apparatus for the transmission, distribution and sale of natural gas together with all appurtenant facilities and equipment in, along, under and across the public roads, public ways, county roads and other public

Reviewed
6-24-96

places in Clinton County, Kentucky; for constructing the necessary conduits and manholes for the installation of said lines, facilities and equipment; for selling natural gas by means of said facilities, and allowing natural gas to be conveyed through Clinton County, Kentucky to any portion of Clinton County and to any other city, town or county via Clinton County. No person, firm, corporation or other entity shall conduct any of the herein described activities with regard to the distribution and sale of natural gas or the installation and construction of lines for same in Clinton County, Kentucky, unless they have first obtained a franchise from Clinton County, Kentucky Fiscal Court.

DEFINITIONS:

SECTION 2. The person, firm or corporation which shall become the purchaser and franchisee of this franchise, or any successor or assignee thereof, shall for brevity hereinafter be spoken of as the "Company" herein, and the public roads, public ways, county roads and other public places of Clinton County, Kentucky shall for brevity hereinafter be spoken of as the "road/s." For purposes of this ordinance, and the anticipated franchise, "road/s" shall include any right-of-way for County Roads which have been acquired by Clinton County, Kentucky, by deed or easement, and in the case of Public Roads for which there is no deed or easement to Clinton County, Kentucky, the County makes no representation or warranty to Company as to the width of said roads or rights-of-way, and further, Clinton County does not obligate itself to file or initiate any court actions, declaratory, or otherwise in order to

determine the ownership or width of any such roads or rights-of-way. Furthermore, Clinton County, Kentucky may also be referred to as "County."

FRANCHISE TERRITORY, ROADS, EASEMENTS AND GAS SUPPLY:

SECTION 3.

(a) The Company awarded a franchise, its legal representatives, successors and assigns, subject to the conditions hereinafter contained, are hereby authorized and empowered to acquire, purchase, construct, maintain, and operate in and through this County, a system for the generation, distribution and transmission of natural gas from points either within or without the physical boundaries of Clinton County, Kentucky and the inhabitants thereof, and from and through this county to persons, corporations, and municipalities beyond the limits thereof, and for the sale of same for light, heat, power and other lawful purposes; to erect and maintain gas mains, lines and other apparatus necessary or convenient for the operation of said system in, upon, across and along each and all of the public roads, public ways, county roads and other public places within the present and future boundaries of Clinton County, Kentucky; to use any and all such public roads, public ways, county roads and other public places while constructing or operating said natural gas system or works; and to cross any and all public roads and public streams in this county for the purpose of constructing, maintaining or extending such pipes, and other apparatus as may be necessary or convenient

for the proper distribution of natural gas in and through this County.

(b) If after any pipe or other apparatus has once been erected Clinton County, Kentucky acting by and through Clinton County Fiscal Court shall order the removal of said gas mains, pipes or apparatus to another location, the County shall pay the costs of making such relocation including cost of relocating the line, etc., as well as any necessary road repairs. However, in the event the relocation is due to widening, regrading or reconstruction of the street or highway, the Company will relocate the line at its expense and the County will be responsible for roadway repairs only. The County shall give Company (30) days written notice of any such plan to relocate gas mains, pipes or other apparatus. The Company will cooperate with the County in any such relocation projects.

(c) The Company shall also have the right to use said roads and rights-of-way with its service and maintenance vehicles and equipment in furtherance of this franchise.

(d) Before beginning the construction of any line or pipes, mains or appurtenances under this franchise, the Company shall file with the County, a copy of all applications for construction permits which documents are required to be filed with the Public Service Commission and/or other regulatory body, Clinton County hereby reserving the right to intervene for all lawful purposes in any such construction permit application process

with the Public Service Commission or other regulatory body. Said copy or copies of construction filings to be furnished to the County by Company at the time same are filed with the Public Service Commission or other regulatory body.

(e) In the construction, reconstruction, maintenance or removal of Company's equipment, lines, etc., Company shall have due regard for the rights of the County, and for others, private individuals, etc., and shall avoid interference with or injury to the property of County or others, private individuals, etc., Said Company shall comply with all the laws of the Commonwealth of Kentucky as to placing lights, danger signals, barricades or warning signs. Further, Company shall conduct its work in a workmanlike manner so as not to unnecessarily interfere with public use of any road and in all such work shall be in accordance with the latest industry standards including Code of Federal Regulations, 49 CFR Part 192, and applicable local, state and federal regulatory agency regulations.

(f) After any work under the franchise is completed, Clinton County shall have the right to request the Public Service Commission and/or other regulatory body to examine said work to determine that is same has been done in accordance with the approved plans and specifications. If same is not in accordance, the Company shall at its own expense make such changes as will cause the work to conform to the plans and specifications approved by the Public Service Commission.

(g) Company shall perform all work in a workmanlike manner and so as not to unnecessarily interfere with the public use of any roads or streams. Whenever the surface of any road is opened or right-of-way is disturbed, it must be restored to as good a condition as it was prior to the opening or disturbance thereof. When possible, road bores are to be conducted by Company when crossing any bituminous or concrete road surfaces so as to minimize damage and repair work, further, the Company shall notify the County Road Supervisor or County Judge/Executive, any time that any excavation work is to be done on any road, and prior to undertaking any such work. When the bituminous or concrete surface of a road must be disturbed, the Company, upon completion of the line installation or other work, will pour a concrete base over the line in order to provide a proper base for resurfacing same.

(h) When an emergency arises which requires immediate repair, the Company may disturb or excavate a road without first obtaining written permission from the County; provided however, that the County is notified in writing of said disturbance or excavation within five (5) days of the start of said disturbance, repair or excavation. This notification shall include at least the time, date and location as well as the extent of excavation or other work performed. Road or right-of-way repairs which may be necessary as a result of natural causes or natural deterioration shall be repaired by County and at its expense, however, any such repairs required due to gas line construction or repairs shall be done, as soon as practicable and at the sole expense of Company.

(i) In the event the Company shall have need to contract with private landowners for the acquisition of property, easements and other rights necessary or convenient for the installation of and expansion of said system, said acquisition shall be a private matter between the landowner and the Company and will be at the sole expense of the Company.

(j) The bids for said franchise shall set forth the bidder's proposal as to the source of natural gas to be furnished Clinton County, Kentucky and verification that bidder has or will guarantee availability of a dependable, reliable and safe supply of natural gas for said system to be used and consumed in Clinton County, Kentucky during the term of said franchise. Further, that the use of any local gas wells by the Company as a supply of gas shall be done strictly in accordance with Public Service Commission criteria.

(k) Bids offered for purchase of this franchise shall state the bidder's acceptance of the conditions set forth in this Enabling Ordinance as well as the subsequent Granting Ordinance.

(l) All bidders must submit with its bid, verification that it has authority from the Public Service Commission to submit said bid.

INDEMNIFICATION AND HOLD HARMLESS:

SECTION 4. The Company shall indemnify, save and hold harmless Clinton County, Kentucky from any and all damages, judgments, decrees, costs and expenses which the County may legally

suffer or incur or which may be legally obtained against the County for or by reason of the use and occupation of any roads by the Company or from any operations of Company under the franchise pursuant to the terms of this franchise or legally resulting from the exercise by the Company of any of the privileges herein granted; and if any claim shall be made or suit brought against the County for damages alleged to have been sustained by reason of the occupation of any road or the exercise of any privileges herein granted, by the Company, the County shall immediately notify the Company in writing thereof and the Company shall defend the County at the cost of the Company and, in the event of final judgment being obtained against the County either independently or jointly with the Company, the Company shall pay such judgment with all costs and hold the County harmless therefrom.

LIABILITY INSURANCE;

SECTION 5. At all times during the term of the franchise the Company will at its own expense maintain in force general comprehensive liability insurance with an insurance company and the policy approved by Clinton County. The coverage represented by such policy shall be for the protection of the County, its elected officials, agents, members of boards or commissions, and employees against liability for loss or damages for bodily injury, death, and property damage by the activities of the Company acting under the franchise, as well as for the protection of the public. Minimum liability limits under the policy are to be FIVE MILLION

(\$5,000,000.00) DOLLARS, for personal injury or death, and TWO MILLION (\$2,000,000.00) DOLLARS for damage to property resulting from any one occurrence. Additional public agencies and their personnel shall be added as insureds, subject to the same terms and conditions, at the request of Clinton County.

COMPANY SERVICES:

SECTION 6. The Company may furnish natural gas for light, heat, power or and any other lawful purpose to any person or persons, company or entity residing along or near the aforesaid roads, and may make such lawful contracts for the use thereof as may be agreed upon between the Company and such person or persons, company or entity.

FURNISHING OF SERVICES:

SECTION 7. The Company shall extend its natural gas mains, pipes and equipment and install additional equipment whenever it is assured of deriving additional business therefrom and receive a reasonable return upon the investment required to install such extension, all subject to Public Service Commission approval.

COMPANY RULES AND REGULATIONS:

SECTION 8. The Company shall have the right to make and enforce reasonable policies and procedures necessary for the proper conduct of its business and protection of its property, subject to all applicable local, state and federal laws and regulations.

RATES:

SECTION 9. The Company shall have the right to charge

reasonable rates for natural gas supplied within the County and rates that are subject to regulation by the Public Service Commission of Kentucky, or any other appropriate local, state and/or federal agency. Furthermore, at least 30 days prior to the initiation of any rate increase proceeding with the Public Service Commission or other regulatory authority with the power to govern the reasonableness of rates, the Company shall notify Clinton County Fiscal Court, in writing, with regard to such request for increased rates. Clinton County shall have the express right to intervene in such proceedings with the Public Service Commission or other regulatory body and may protest such increase.

FRANCHISE TERM:

SECTION 10. This franchise and all rights and privileges granted hereunder shall be in full force and effect for a period of twenty (20) years from and after the date when this franchise is granted to the Company, subject of course to the Company's compliance with the provisions of this franchise.

FORFEITURE OF FRANCHISE RIGHTS:

SECTION 11. The franchise may be forfeited, at the option of Clinton County, upon failure or refusal by Company to honor the terms and conditions set forth herein. Forfeiture may be exercised by written notice to Company of the Company's failure to honor the terms and conditions hereof, followed by Company's refusal to eliminate or correct such failure or violation within sixty (60) days. Prior to forfeiture of the franchise and all rights, and

privileges appertaining thereto, the Company shall have the right to petition Clinton County, Kentucky, in writing, for a public hearing with regard to said forfeiture. Said public hearing shall be granted within thirty (30) days after receipt of said written petition. At such hearing, the Company shall have the right to appear and be heard, the right to have legal counsel present, the right to present evidence, the right to subpoena witnesses to testify on its behalf and the right to have said proceeding recorded. The recording of said proceeding will be public record which can be used for evidentiary purposes and any lawful agency or legal proceeding. Subsequent to the conclusion of said hearing, and within 10 days, Clinton County, Kentucky, shall render a written Order, Findings of Fact and Conclusions of Law as to its decision regarding forfeiture.

SALE OF SYSTEM:

SECTION 12. In the event the Company desires to sell all or any portion of the system that it establishes for the distribution of natural gas under this franchise, the County shall be given at least thirty (30) days prior, written notice of any such proposed sale and the County specifically reserves the right to intervene in any Public Service Commission proceeding regarding any such sale in order to insure that the prospective purchaser can comply with all terms and provisions pertaining to this franchise.

COMPLIANCE:

SECTION 13. The Company shall comply with all applicable

local ordinances as well as local, state and federal laws and regulations in constructing and operating the natural gas system herein, including but not limited to, compliance with the rules, regulations and safety standards of the Public Service Commission of the Commonwealth of Kentucky or any other appropriate local, state and/or federal agency.

COUNTY CHARGES:

SECTION 14. In the event that the County should enact a utility tax, user fee or similar charge to be levied upon gas purchasers (consumers) during the term of this franchise, the Company shall add said charge to its monthly bills, collect same for the County and deliver the collections, monthly to the County, all at no cost to the County. Nothing herein shall exempt the Company from the payment of general or special ad valorem property taxes, real or personal, now or hereafter levied by state or local government or taxing districts thereof.

TRANSFER OF FRANCHISE-RESTRICTIONS:

SECTION 15. This franchise may be transferred or assigned by the company only with the consent and approval of the Public Service Commission. The County specifically reserves the right of intervention or to initiate any Public Service Commission proceedings regarding a sale. It is further understood that the word "Company" whenever it appears herein shall include and apply to all the successors and/or assigns of the Company.

FRANCHISE FEE:

SECTION 16. Clinton County, Kentucky shall receive from the

Company as consideration for the granting of this franchise and the continuing enjoyment thereof, an annual franchise fee, said fee to be a percentage of all gross receipts, based on gross gas consumption revenues received by the company. Such fee shall be equal to a minimum of (3% for the first two years of the franchise, 4% for the next two years and 5% thereafter) of the Company's gross revenues derived from the sale of natural gas to residential and commercial customers located within Clinton County, Kentucky and shall be paid quarterly, and the payment thereof shall be due on or before the end of each period of thirty (30) days succeeding the close of each quarter of a calendar year during which the franchise is in effect. The only exception to the payment of said fee will be in the event the Company shall also hold a franchise for natural gas with an incorporated city within Clinton County, and in that event, no fee shall be charged as it pertains to customers located within the city limits of said incorporated city which may exist at the time of the granting of this franchise. Payments shall be accompanied by a statement duly verified before a Notary Public reflecting the total gross receipts received by company during the preceding calendar quarter. Company shall at all times keep and maintain a full, true and correct accounting of all the gross receipts and income arising out of operations under the franchise, and books of accounts and all other records shall at all reasonable times be open to inspection and examination within the County by Clinton County Fiscal Court and/or its representatives. Clinton County does hereby reserve the right to audit, at County expense,

and recompute any and all amounts paid hereunder, and no acceptance of any payment shall be construed as a release or as an accord and satisfaction or waiver of any claim the County may have for further or additional sums payable under the franchise. Additionally, Company will furnish County with a copy of annual audit report required by Public Service Commission. Further, the amount of the proposed annual franchise fee to be paid Clinton County will be included in the bid submitted by bidders.

CONSTRUCTION:

SECTION 17.

(a) The company shall start construction of a natural gas system within ninety (90) days from the date of the granting of the Certificate of Convenience and Necessity For Construction by the Public Service Commission, and the company shall make reports upon its progress in constructing the natural gas system to the County, every ninety days until the system is in operation, operation being that natural gas is supplied to customers within the County, said reports being for the purpose of informing the County that the Company is making reasonable progress toward the implementation of the system and for Clinton County, Kentucky, acting by and through Clinton County Fiscal Court to determine whether the franchise should be revoked by reason of the failure of the Company to make reasonable progress toward implementation of the systems, all at the discretion of the County.

(b) Reasonable progress toward implementation of the system

shall include, but not be limited to the actual construction and laying of gas lines and mains.

(c) Company shall within ten days from the acceptance of its bid by the County, deposit with the County a Fifty Thousand (\$50,000.00) Dollar performance deposit or insurance bond (with County named as Payee) and if cash, to be held in escrow by the County pending a showing of reasonable progress toward implementation of the system. Upon a showing of such progress, the County may refund said deposit or release Company from this obligation at any time following the expiration of ninety (90) days from the franchise acceptance, but not later than 180 days from said date. On the failure of company to show reasonable progress towards implementation of the system within 180 days from the franchise date, the rights and authority herein granted shall cease, and the security deposited with the County shall be forfeited to County without action by the County and without further notice to Company; provided however, that Clinton County may extend the time within which services are to be commenced as it may deem just and equitable.

(d) Following the implementation of the operation of the system the company shall make annual reports to the County concerning the operation of the natural gas system and the financial condition of the company at the end of each calendar year.

(e) Within two years from the award of the franchise to the

Company, the Company shall further make available natural gas service to a minimum of fifty-percent (50%) of the potential, residential and commercial customers desiring natural gas within Clinton County which potential customers have requested service and which service has been approved by the Public Service Commission, and submit to the County a report substantiating said availability of service, as well as a list of those individuals or entities requesting gas service, for the purpose of informing the County that the Company is making reasonable progress to provide service to all potential, residential and commercial customers desiring natural gas within the County and for the County to determine whether the franchise should be revoked by reason of the failure of the company to make reasonable progress in offering and providing services to all potential, residential and commercial customers desiring natural gas within the County. In making this determination, the County shall give due consideration to the Company's rights as outlined in SECTION 7, herein.

(f) Furthermore, the bid from potential bidders will specify the amount of time which the Company will require in order to service any customer, residential or commercial and the policy which the Company plans to implement and adhere to as to the procedures and response time as to establishing initial service as well as the policy and procedures regarding trouble calls and maintenance calls for all customers. Furthermore, Company, after receiving the franchise award, will, as soon as possible, provide

County with a copy of any operations manual required by the Public Service Commission.

(g) The Company shall locate and maintain a local customer office within Clinton County, Kentucky at all times during the term of the franchise and will maintain regular business hours at said office for the benefit of the public.

BINDING EFFECT:

SECTION 18. The terms of this ordinance creating this franchise and the subsequent granting ordinance are contractual and binding according to the terms contained therein, and shall be binding on as well as inuring to the benefit of Clinton County, Kentucky and the Company and the successors and assigns of the Company.

INCONSISTENT ORDINANCES OR PROVISIONS:

SECTION 19. Provisions of any other ordinance that are inconsistent with this ordinance are and shall be ineffective with respect to the company acquiring this franchise.

ADVERTISEMENT OF FRANCHISE ORDINANCE AND FOR BIDS:

SECTION 20.

(a) It shall be the duty of Clinton County as soon as practicable after the ratification of this enabling ordinance to advertise the sale of this franchise by advertising for bids for same, at a minimum, once per week for three successive weeks in the Clinton County News so that the final publication shall appear not less than seven days before the day on which the bid opening shall

occur not more than 21 days before the day of the bid opening. Said notices and newspaper advertisement shall state when the County shall receive the bids for the sale of said franchise by sealed bid, giving the time and place of opening of said bids. All bids shall be effective and valid for a period of thirty (30) days following the the opening of same.

(b) Said advertisement shall reserve unto the County the right to reject any and all bids submitted.

(c) The newspaper publication shall describe the franchise to be sold and state that a copy thereof is available for inspection at the Clinton County, Kentucky, Judge/Executive's Office.

(d) The County shall sell said franchise in accordance with said notice and advertisement and the County may accept that bid which in its judgement is the highest and best bid or the County may reject any and all bids submitted.

(e) In addition to the consideration in the form of a franchise fee to Clinton County, Kentucky, the bidder will state a dollar amount proposed for the purchase of said franchise, which amount shall not be less than One Thousand Dollars (\$1,000.00). The bidder to whom said franchise shall be awarded shall state in the bid, the acceptance of the terms and provisions of this ordinance as well as the subsequent granting ordinance and the successful, shall, within ten (10) days after the acceptance of its bid by Clinton County, pay the aforesaid amount of the bid to Clinton County, Kentucky. No permit fee or other additional charge

shall be imposed on the company. The monies called for in this section are non-refundable.

(f) The successful bidder will reimburse Clinton County, Kentucky the amount of all legal advertising and notice costs incurred as a result of the enabling and granting ordinances and final publication of same.

ADDITIONAL CONSIDERATION:

SECTION 21. As additional consideration for the franchise, the Company shall allow Clinton County, Kentucky a discount of 25% on all natural gas used for heating and operating any public, county owned building which building is used exclusively for public and/or county use or purposes. To clarify, said discount would not apply to a County owned building which is being leased to a private person or entity. Such discount shall be applied to the rates that would otherwise be charged for nonresidential service of similar extent. Further, this provision is subject to the "special contract" provisions of the Public Service Commission.

SEVERABILITY:

SECTION 22. The franchise is granted pursuant to the laws of the Commonwealth of Kentucky relating to the granting of such rights and privileges by county governments. If any article, section, sentence, etc..., of this ordinance is for any reason held illegal, invalid or unconstitutional, such invalidity shall not affect the validity of the ordinance or any of the remaining portions. The invalidity of any portion of this ordinance shall not

abate, reduce, or otherwise affect the consideration or other obligation required of the grantee. In the event of a declaration of invalidity by a Court of competent jurisdiction, nothing shall prohibit the proposed granting ordinance/s from being considered a right of easement for valuable consideration and this provision shall be set forth in any granting ordinance/s.

PUBLIC BENEFIT:

SECTION 23. This ordinance is hereby declared to be a measure in the interest of public peace, health, welfare and safety, and this ordinance shall become effective upon passage, approval and publication as required by law.

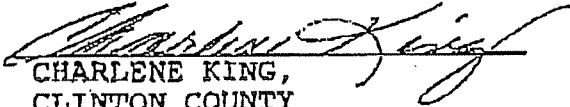
Published prior to passage on the 20th day of June, 1996.

Read and approved on first reading on the 19th day of June, 1996.

Read and approved on second reading on this the 20th day of June, 1996.

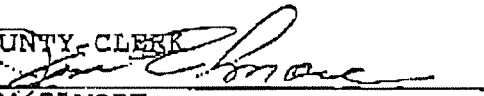
CLINTON COUNTY, KENTUCKY.

By:


CHARLENE KING,
CLINTON COUNTY
JUDGE/EXECUTIVE
CLINTON COUNTY FISCAL COURT

ATTEST:

COUNTY CLERK


JIM ELMORE
OrdGas.96

CITY OF ALBANY, KENTUCKY
City Ordinance No. 85-001

AN ORDINANCE CREATING A FRANCHISE FOR THE CONSTRUCTION, MAINTENANCE AND OPERATION OF A NATURAL GAS SYSTEM IN THE CITY OF ALBANY, KENTUCKY FOR THE FURNISHING AND SELLING OF NATURAL GAS BY MEANS OF SAID FACILITIES AND PROVIDING FOR THE SALE OF SAID FRANCHISE IN THE CITY OF ALBANY, KENTUCKY.

WHEREAS the City of Albany, Kentucky is authorized by the Constitution of the Commonwealth of Kentucky to establish a franchise within the City of Albany, Kentucky for the construction and maintenance of a system for selling natural gas within the city for the use and enjoyment of its citizens and

Whereas the City of Albany, Kentucky wishes to establish certain guidelines for the operation of a natural gas system for the use and enjoyment of the people of the City of Albany,

NOW THEREFORE, be it ordained by the City of Albany, Kentucky as follows:

1. That there is hereby created a franchise for installing, laying and maintaining gas pipes and other necessary apparatus for the transmission, distribution and sale of natural gas together with all appurtenant facilities and equipment in, along, under and across the public ways, roads, streets, alleys and other public places in the City of Albany, Kentucky, and for constructing the necessary conduits and manholes for the installation of said pipes, facilities and equipment, and for selling natural gas by means of said facilities, and such gas may be conveyed through the City of Albany and to any portion of Clinton County and to any other town or county.

2. The person, firm or corporation which shall become the purchaser of this franchise, or any successor or assignee thereof, shall for brevity hereinafter be spoken of as the

"Company" herein, and the public ways, roads, streets, alleys and other public places of the City of Albany, Kentucky shall for brevity hereinafter be spoken of as the "streets."

3. The Company awarded this franchise, its legal representatives, successors and assigns, are hereby subject to the conditions hereinafter contained, authorized and empowered to acquire, purchase, construct, maintain, and operate in and through this city a system for the generation, distribution and transmission of natural gas from points either within or without the corporate limits of this city, to this city and the inhabitants thereof, and from and through this city to persons, corporations and municipalities beyond the limits thereof, and for the sale of same for light, heat, power and other purposes; to erect and maintain gas mains, pipes and other apparatus necessary or convenient for the operation of said system in, upon, across and along each and all of the streets, alleys and public places within the present and future corporate limits of this city; to have and hold as by law authorized, any and all property, easements and other rights necessary or convenient for said purpose, said property, easements and other rights to be acquired by the Company at its own expense; to use any and all such streets, alleys and public places while constructing or operating said natural gas system or works; and to cross any and all streets and streams in this city for the purpose of constructing, maintaining or extending such pipes, and other apparatus as may be necessary or convenient for the proper distribution of natural gas in and through this city. If after any pipe or other apparatus has once been

erected the City Council shall order the removal of said gas mains, pipes or apparatus to another location, the City shall pay the cost of making such relocation unless due to widening, regrading or reconstruction of the street or highway, in which case the Company will relocate at its expense. The Company shall also have the right to use the streets with its service and maintenance vehicles and equipment in furtherance of this franchise. Before beginning the construction of any new line of pipes, mains or appurtenances under this franchise, the Company shall prepare a plat showing the construction of the work to be done and a brief description showing the manner in which it is to be done, which plan and specification shall be presented to the City Council for its approval, and shall not proceed with such construction until approval is granted. Such approval, however, shall not be unreasonably denied, withheld or delayed. After the work is completed the City Council shall have the right to examine said work and should it find that the work has not been done in accordance with the plans and specifications approved by the City, the Company shall at its own expense make such changes as will cause the work to conform to the plans and specifications approved by the City. The work shall be done in a workmanlike manner and so as not to unnecessarily interfere with the public use of any said streets. Wherever the surface of any street is opened it must be restored to as good a condition as it was prior to the opening thereof.

4. The Company shall indemnify, save and hold harmless the City from any and all damages, judgments, decrees, costs and expenses which the City may legally suffer or incur or which may be legally obtained against the City for or by reason of the use and occupation of any streets in the city by the Company, pursuant to the terms of this franchise or legally

resulting from the exercise by the Company of any of the privileges herein granted; and if any claim shall be made or suit brought against the City for damages alleged to have been sustained by reason of the occupation of any street or the exercise of any privileges herein granted, by the Company, the City shall immediately notify the company in writing thereof and the Company is hereby given the right and privilege to defend or assist in defending such suit in the name of the City.

5. The Company may furnish natural gas for light, heat, power and any other lawful purpose to any person or persons, company or entity residing along or near the aforesaid streets, and may make such lawful contracts for the use thereof as may be agreed upon between the Company and such person or persons, company or entity.

6. The Company shall extend its natural gas mains, pipes and equipment and install additional equipment whenever it is assured of deriving additional business therefrom and receive a reasonable return upon the investment required to install such extension.

7. The Company shall have the right to make and enforce reasonable rules and regulations necessary for the proper conduct of its business and protection of its property, subject to all local, state and federal laws and regulations.

8. The Company shall have the right to charge reasonable rates for natural gas supplied within the city and rates that are subject to regulation by the Public Service Commission of Kentucky, or any other appropriate local, state and/or federal agency.

9. This franchise and all rights and privileges granted hereunder shall be in full force and effect for a period of

twenty (20) years from and after the date when this franchise is granted to the Company, subject to the Company's compliance with the provisions of this franchise.

10. In the event that the Company desires to sell the system that it establishes for the distribution of natural gas within the city, the City shall have the right of first refusal to purchase the system from the Company at a price to be agreed upon between the City and the Company. In the event that no price can be agreed upon between the City and the Company, the parties may provide for a method of determining a reasonable price for the system, including but not limited to, mediation or arbitration.

11. The Company shall comply with all local, state and federal laws and regulations in constructing and operating the natural gas system herein, including but not limited to, compliance with the rules and regulations of the Public Service Commission of the Commonwealth of Kentucky or any other appropriate local, state and/or federal agency.

12. In the event that the City should enact a utility tax, user fee or similar charge to be levied upon gas purchasers during the term of this franchise, the Company shall add said charge to its monthly bills, collect same for the City and deliver the collections monthly to the City, all at no cost to the City.

13. This franchise may be transferred by the Company only with written prior consent of the City and subject to the City's right of first refusal to purchase said franchise as set forth herein above. It is further understood that the word "company" whenever it appears herein shall include and apply to all the successors and/or assigns of the Company.

14. The City shall receive from the Company as consideration

for the granting of this franchise and the continuing enjoyment thereof, an annual franchise fee of 1½% of all gross receipts received by the Company during a fiscal year, a fiscal year being from July 1 to June 30, and the Company shall pay said fee to the City within 30 days from the end of the fiscal year.

15. The Company shall start construction of a natural gas system within ninety (90) days from the date of the award of this franchise and the Company shall make reports upon its progress in constructing the natural gas system to the City, every ninety days until the system is in operation, operation being that natural gas is supplied to customers within the city, said reports for the purpose of informing the City that the Company is making reasonable progress toward the implementation of the system and for the City to determine whether the franchise should be revoked by reason of the failure of the Company to make reasonable progress toward implementation of the system, as decided by the City. Following the implementation of the operation of the system the Company shall make annual reports to the City concerning the operation of the natural gas system and the financial condition of the Company at the end of each fiscal year. Within two years from the award of the franchise to the Company, the Company shall further make available natural gas service to seventy-five percent (75%) of the potential customers within the city of Albany and submit unto the City a report substantiating said availability of service, for the purpose of informing the City that the Company is making reasonable progress to provide service to all potential customers within the city and for the City to determine whether the franchise should be revoked by reason of the

failure of the company to make reasonable progress in offering services to all potential customers within the city.

16. The terms of this ordinance creating this franchise are contractual and binding according to its terms, on the City and the Company.

17. Provisions of any other ordinance that are inconsistent with this franchise are and shall be ineffective with respect to the Company acquiring this franchise.

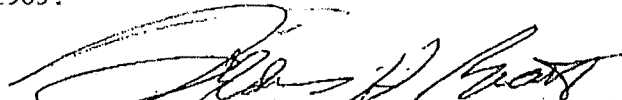
18. Any previous ordinance passed by the City of Albany dealing with the creation of a natural gas franchise is expressly repealed by the enactment of this ordinance.

19. It shall be the duty of the Clerk of the City as soon as practicable after the ratification of this ordinance to advertise the sale of this franchise once a week for two successive weeks in "The Clinton County News," so that the final publication shall appear not less than seven days before the day on which the sale shall occur nor more than 21 days before the day of the sale, said sale to occur on Friday, March 1, 1985, at the hour of 3:00 P.M., local time, said notice and newspaper advertisement shall state when the Clerk shall receive the bids for the sale of said franchise by sealed bid, giving the time and place of opening of said bids. All bids shall be for a period of ten (10) days following the date of the opening. Said advertisement shall reserve unto the City the right to reject any and all bids submitted. The newspaper publication shall describe the franchise to be sold and state that a copy thereof is available for inspection at City Hall. The City shall sell said franchise in accordance with said notice and advertisement and the City may accept


that bid which in its judgment is the highest and best bid or the City may reject any and all bids submitted. No bid of less than \$100 shall be accepted. The bidder to whom said franchise shall be awarded shall within ten (10) days after the acceptance of its bid by the City Council of the City of Albany pay the amount of the bid to the City of Albany. No permit fee or other additional charge, except occupational license fee, shall be imposed on the Company.

20. This ordinance shall take effect and be in full force when passed, published and recorded according to law.

IN WITNESS WHEREOF, I, the undersigned, as Mayor of the City of Albany, Kentucky, have hereunto set my hand on this 15th day of February, 1985.


SIDNEY S. SCOTT, Mayor
City of Albany, Kentucky

ATTEST:


GLENN A ALLEN, Clerk
City of Albany, Kentucky

CITY OF ALBANY, KENTUCKY
City Ordinance No. 86-003

AN ORDINANCE AMENDING A PRIOR ORDINANCE WHICH CREATED A FRANCHISE FOR THE CONSTRUCTION, MAINTENANCE AND OPERATION OF A NATURAL GAS SYSTEM IN THE CITY OF ALBANY, KENTUCKY FOR THE FURNISHING AND SELLING OF NATURAL GAS BY MEANS OF SAID FACILITIES AND PROVIDING FOR THE SALE OF SAID FRANCHISE IN THE CITY OF ALBANY, KENTUCKY.

WHEREAS the City of Albany, Kentucky did on March 4, 1986, vote to purchase the physical plant of Albany Gas Utility Company, and grant an exclusive management contract for same to Albany Gas Utility, and

WHEREAS it appears that the Ordinance passed was in fact defective and due to the chaotic events of recent days and the discord and confusion it has created among the members of City government and the good townspeople of Albany, Kentucky and

WHEREAS the City council has voted that the present situation as it exists is in fact an emergency situation, and therefore the second reading of this ordinance is not required as per KRS 83A.060(Sub 7);

NOW THEREFORE, be it ordained by the City of Albany, Kentucky, that the portion of City Ordinance No. 85-001 as set out below is amended as follows:

13. This franchise may be transferred by the Company only with written prior consent of the City and subject to the City's right of first refusal to purchase said franchise as set forth herein above. It is further understood that the word "company" whenever it appears herein shall include and apply to all the successors and/or assigns of the Company. Should the City elect to purchase said Franchise, the City may enter into a management agreement with any party or entity, including the original grantee of the Franchise. The terms and conditions of said management agreement shall be negotiable between the City and the entity granted the management contract.

This Ordinance shall take effect after its passage and upon publication.

Enacted this 7th day of March, 1986.

ATTEST:

Stephen W. Allen
CITY ATTORNEY


Lanny Bowlin
LANNY BOWLIN, MAYOR
City of Albany, Kentucky

This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.

Dated: October 21, 2010




C. Kathryn Preston
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:

GASCO DISTRIBUTION
SYSTEMS, INC.

Debtor.

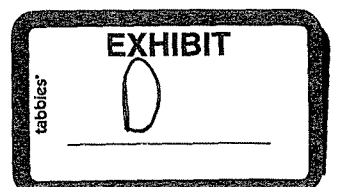
Case No. 09-056171

Chapter 11

Judge C. Kathryn Preston

**ORDER (A) APPROVING THE SALE OF SUBSTANTIALLY ALL OF DEBTOR'S
UTILITY DISTRIBUTION SYSTEMS ASSETS TO SUCCESSFUL BIDDER AT AUCTION;
(B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN
EXECUTORY CONTRACTS; AND (C) GRANTING OTHER RELATED RELIEF
[RELATED TO DOC. NOS. 179, 199 and 211]**

This matter coming before the Court on the Motion of Gasco Distribution Systems, Inc., Debtor and Debtor in Possession ("Debtor"), for an Order (I) Authorizing the Sale of Substantially all of its Utility Distribution Systems Assets Free and Clear of Liens, Claims and Encumbrances under Asset Purchase Agreement, Subject to Higher and Better Offers, (II) Approving the Procedures for an Auction, (III) Authorizing the Assumption and Assignment of



Certain Executory Contracts in Connection Therewith, (IV) Scheduling an Auction and a Hearing Date Relating Thereto, (V) Approving Break-Up Fee, and (VI) Approving the Forms of Notice Thereof [Doc. No. 179] (the “Sale Motion”). The Sale Motion sought approval of, among other things, (i) the institution of bidding procedures to be employed in connection with the Debtor’s sale of substantially all of the Debtor’s utility distribution systems assets to Navitas Assets, LLC or its designated assigns (the “Buyer”) pursuant to the terms and conditions of an Asset Purchase Agreement (“APA”) subject to higher or otherwise better bids, and (ii) the scheduling of a bid submission deadline, auction, and sale hearing and objection deadline and the approval of the sale of substantially all of the Debtor’s assets to Buyer under the APA subject to higher and better bids being received at auction, and the Debtor’s assumption and assignment of certain of its executory contracts in connection therewith. In connection with the Sale Motion, the Court previously entered its *Order Authorizing And Approving The Bidding Procedures For An Auction Sale Of Substantially All of the Debtor’s Utility Distribution Systems Assets, Scheduling An Auction Date And Sale Hearing Date And The Deadline For Objections To The Proposed Sale, And Approving Notices To Creditors And Parties In Interest* on August 23, 2010 [Docket No. 199] (the “Bid Procedures Order”). After the Auction held on October 12, 2010 pursuant to the Bid Procedures Order, and as identified in the Report of Auction Sale [Doc. No. 211] (“Auction Report”)¹ filed herein by the Debtor, the Debtor has determined the Winning Bid and Winning Back-Up Bid as follows: Navitas Assets, LLC, the Stalking Horse (“Buyer”) has been determined by the Debtor to be the Winning Bidder submitting the highest and best bid (the “Winning Bid”) for the combination of the Jellico Utility and the Three ABF Utilities, with the

¹ Attached to the Report of Auction Sale is the Amendment to the APA as between the Debtor and Buyer, which, the Debtor represents, does not make any changes that are less favorable, nor more burdensome, than Buyer’s APA. Also attached to the Report of Sale is the Winning Back-Up Bid of Powell Clinch for the Jellico Utility only, not including the increase of the purchase price at the Auction to \$570,000.

base purchase price² bid of \$760,200, and Powell Clinch Utility District of Anderson and Campbell County, Tennessee (“Powell Clinch”) has been determined by the Debtor to be the Winning Back-Up Bidder submitting the highest and best bid for the Jellico Utility Only “Winning Back-Up Bid” with a base purchase price of \$570,000. A hearing (“Sale Hearing”) was held on the Sale Motion and Auction Report and to consider approval of the Winning Bid and Winning Back-Up Bid on October 19, 2010; and all creditors and parties in interest have been afforded an opportunity to be heard with respect to the Sale Motion and Auction Report and all relief sought thereunder, and the Court being otherwise duly advised and informed in the premises, and noting that there have been no objections, the Court, for the reasons stated on the record at the Sales Hearing, and further based upon the Sale Motion and Auction Report, hereby finds and Orders as follows.³

IT IS HEREBY FOUND AND DETERMINED THAT:

A. This Court has jurisdiction over the Sale Motion pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue of this case and the Sale Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought in the Motion are Sections 105(a), 363(b), (f), (m) and (n), and 365 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, as amended (the “Bankruptcy Code”), and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

B. The Debtor has conducted a thorough and adequate search for potential purchasers for the Distribution Systems or Assets (“Assets”).

C. Proper, timely, adequate and sufficient notice of the Sale Motion, the Sale Hearing, and the transactions contemplated by the APA and this Order (the “Transactions”), including,

² As set forth in the Sale Motion, page 7, Buyer’s APA, not only has a base purchase price, but customary adjustments including credit/debits, as appropriate, including for customer deposits, accounts receivable collected within a certain time, spare parts, unrecovered gas costs and Cure Amounts on Assumed Contracts. The Debtor represents that the Winning Back-Up Bid contains similar adjustments.

³ All capitalized terms not defined in this Order shall have the same meanings as in the Sale Motion or the Winning Bidder’s APA, and, as appropriate, the Winning Back-Up Bidder’s APA.

without limitation, the assumption and assignment of the Assumed Contracts, has been provided in accordance with Sections 105(a), 363 and 365 of the Bankruptcy Code and Rules 2002, 6004, 6006, and 9014 of the Bankruptcy Rules. Such notice was good, sufficient and appropriate under the particular circumstances, and no other or further notice of the Sale Motion, the Sale Hearing, or the transactions, including, without limitation, the assumption and assignment of the Assumed Contracts, is or shall be required.

D. As demonstrated by (i) the testimony and/or other evidence proffered at the Sale Hearing, and (ii) the representations of counsel made on the record at the Sale Hearing, the Debtor has conducted the sale process fairly and openly in a manner reasonably calculated to produce the highest and best offers for the Assets under the circumstances and in compliance with the Bid Procedures Order. The Sale Hearing was held and the highest and best offer received by the Debtor for the Assets at or before the Sale Hearing was the offer by Buyer to purchase the Assets at a base purchase price of \$760,200, and such offer is reflected in the Buyer's APA⁴. The highest and best back-up bid on the Jellico Utility only is the \$570,000 offered by the Winning Back-Up Bidder, Powell Clinch, pursuant to the terms of the Winning Back-Up Bid.

E. Approval of the Buyer's APA and consummation of the Transactions, including the sale of the Assets at this time, is in the best interests of the Debtor, its creditors, its estate, and other parties in interest. The Debtor has established that strong business reasons exist for (i) selling the Assets outside the ordinary course of business and outside a plan and (ii) the assumption and assignment of the Assumed Contracts as specified in the APA. The sale of the Assets pursuant to the APA will produce higher value than could be obtained in a liquidation sale.

F. Upon review of the evidence presented or proffered, the Court finds that the APA was negotiated, proposed and entered into by the Debtor and the Buyer without collusion, in good faith, and from arm's-length bargaining positions. The terms of the APA are fair and reasonable. Neither the Debtor, nor the Buyer have engaged in any conduct that would cause or permit the APA or any part of the Transactions provided for herein to be avoided, or for the imposition of costs and damages against the Buyer under Section 363(n) of the Bankruptcy Code. The Buyer is not an insider of the Debtor as that term is defined in Section 101(31) of the Bankruptcy Code. The Buyer is not related to nor affiliated with the Debtor or any of its officers or shareholders.

G. Upon review of the evidence presented or proffered, the Court finds that the Buyer is a good faith purchaser under Section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby. The Buyer will be acting in good faith within the meaning of Section 363(m) of the Bankruptcy Code in closing the sale of the Assets pursuant to the APA.

H. The Debtor is the sole and lawful owner of the Assets. Subject to certain exceptions set forth herein, the Debtor may sell the Assets to the Buyer free and clear of all liens, claims and interests in accordance with, and to the extent permitted by, section 363(f) of the Bankruptcy Code. As a condition of purchasing the Assets, the Buyer requires that the Assets be sold free and clear of all liens, claims and interest, including all tax liens, except those explicitly and expressly assumed by the Buyer in the APA. Accordingly, the transfer of the Assets to the

⁴ "APA" as referenced singularly herein, shall only mean the Buyer's APA, as amended.

Buyer is or will be a legal, valid and effective transfer of the Assets, and will vest the Buyer with all right, title and interest in and to the Assets, free and clear of all liens, claims and interest, including all tax liens, except those explicitly and expressly assumed by the Buyer in the APA pursuant to, and to the fullest extent permitted by, section 363(f) of the Bankruptcy Code. Except as otherwise expressly set forth in the APA, the transfer of the Assets to Buyer does not and will not subject Buyer to any liability whatsoever with respect to the operation of the Debtor's business and/or the ownership of the Assets prior to the Closing.

I. Non-debtor parties holding valid liens, claims or interests in or with respect to the Assets who did not object to the Sale Motion or those whose objections were withdrawn are deemed to have consented to the sale of the Assets free and clear of their liens, claims or interests in or with respect to the Assets pursuant to section 363(f)(2) of the Bankruptcy Code.

J. In the event that the Buyer does not timely perform, or otherwise fails to close on the Transactions contemplated by the APA, and without otherwise releasing the Buyer from any claims that the Debtor may have under the APA, the Winning Back-Up Bid of Powell Clinch shall automatically be deemed to be the highest and best bid with respect to the Jellico Utility, and the Debtor and Powell Clinch, shall be authorized, but neither required to, close on the sale of the Jellico Utility as is commercially reasonable without further order of this Court, on the terms and conditions set forth in the Winning Back-Up Bid, except as modified herein. Accordingly, in such event, the findings of this Court with respect to the Buyer and the APA as set forth in paragraphs E, F, G, H, and I hereof shall also be deemed to equally apply to the Winning Back-Up Bidder and the Winning Back-Up Bid on the sale of the Jellico Utility only. Notwithstanding, Powell Clinch's closing on the purchase of the Jellico Utility on the terms and conditions set forth in its Winning Back-Up Bid and herein shall then be at its option and it shall not be obligated to so close, unless it subsequently agrees to do so.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion, as supplemented by the Auction Report, is GRANTED by this Order.

Approval of the Asset Purchase Agreement

2. The APA, and all of the terms and conditions thereof, as may be amended, including as may be amended by this Order, are hereby approved.

3. Pursuant to Sections 363(b) and (f) of the Bankruptcy Code, the Debtor is authorized and directed to consummate the sale of the Assets pursuant to and in accordance with the terms and conditions of the APA and this Order.

4. The Debtor is empowered to perform under, consummate and implement the APA, and is authorized and directed to take all other actions as are necessary to effectuate the Transactions, including executing and delivering all additional instruments and documents that may be reasonably necessary or desirable to implement the APA, and to take all further actions as may be requested by the Buyer for the purpose of assigning, transferring, granting, conveying and

conferring to the Buyer or reducing to possession, the Assets and the Assumed Contracts, or as may be necessary or appropriate to the performance of the obligations as contemplated by the APA.

Transfer of Assets Free and Clear of Liens

5. At Closing, Buyer shall acquire the Assets for the Purchase Price (as defined in the APA, to the extent modified hereby). Upon the payment of the Purchase Price for the respective assets, the Assets shall be transferred, and title passed, to the Buyer in the respective Assets pursuant to the fullest extent permitted by Sections 105(a) and 363(f) of the Bankruptcy Code and all other applicable laws, free and clear of all claims, liens, interests or encumbrances, including all tax liens, other than the Assumed Liabilities and such other liens, claims and interests as are expressly and explicitly assumed by the Buyer in the APA (collectively, the "Permitted Liens"), with all such liens, claims, interests or encumbrances of any kind or nature whatsoever (other than the Assumed Liabilities and the Permitted Liens) attaching to the proceeds of the sale of the Assets in the order of their priority, with the same validity, force and effect which they now have.

6. Except for the Assumed Liabilities (as defined in the APAs or as otherwise expressly provided for in the APA), the Buyer shall not have any liability or responsibility for any Liability (as defined in the APA) or other obligation of the Debtor arising under or related to the Assets. Without limiting the generality of the foregoing, and except as otherwise specifically provided in the APA, the Buyer shall not be liable for the Excluded Liabilities (as defined in the APA) or any other Liabilities against the Assets, Debtor or any of their predecessors or affiliates including, but not limited to, Liabilities whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtor or any obligations of the Debtor arising prior to the Closing Date, whether relating to or arising out of the Business (as defined in the APA), the Excluded Assets (as defined in the APA) or the Assets or otherwise, other than the Assumed Liabilities.

7. Except as expressly permitted or otherwise specifically provided by the APA, all parties holding liens or claims or interests of any kind or nature whatsoever against Debtor or the Assets (whether legal or equitable, secured or unsecured, matured or unmatured, known or unknown, liquidated or unliquidated, contingent or non-contingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Debtor, the Assets, the operation of the Debtor's business prior to the Closing Date, or the transfer of the Assets to the Buyer, hereby are forever barred, estopped, and permanently enjoined from asserting such persons' or entities' liens or claims against the Buyer, its successors or assigns, its property or assets, which claims are hereby transferred to the sale proceeds whether or not a party asserting any such claim has delivered to Buyer a release. But for the obligations under Assumed Contracts or other assumed liabilities as expressly provided for in the APA, Buyer shall not be liable for any claims of any kind or nature, whether prepetition or post-petition, matured or unmatured, fixed or contingent, liquidated or unliquidated, known or unknown, against the Debtor or any of their predecessors or affiliates, and the Buyer shall have no successor liability to the extent this Court has the authority to order same under applicable law.

8. Pursuant to sections 365(b), (c) and (f) of the Bankruptcy Code, and subject to this Order, the Debtor is authorized to assume and assign the executory contracts as were identified on the Notice of Intent to Assume (hereinafter referred to collectively as the "Assumed Contracts"), which, consistent with the APA and this Order, are those identified in the APA (as such terms are defined in the APA) designated for assignment to the Buyer pursuant to the APA, subject to the procedures established in the Bid Procedures Order.

9. Those Assigned Contracts, to which there has been no objection to assignment, assumption and the Cure Amount (i) shall be deemed assumed and assigned to the Buyer as of the Closing Date and (ii) the Buyer shall be deemed to have provided adequate assurance of its future performance under the relevant Assigned Contracts within the meaning of sections 365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(2)(B) of the Bankruptcy Code.

10. Upon Closing, the Buyer shall assume full responsibility and liability for all Assigned Contracts, including payment of all Cure Amounts (as have been established in accordance with Cure Notice), and Debtor shall have no further responsibility, financial or otherwise, under any Assumed Contracts for any defaults, breaches or other damages associated with the Assumed Contracts, whether arising or accruing prior to or subsequent to the Closing, except as follows: unless expressly assumed by the Buyer, the Debtor shall be responsible for any additional obligations accruing post petition since the filing of the Sales Motion under the Assigned Contracts through the date of Closing, and a portion of the Purchase Price may be applied to pay the same.

11. On or as promptly after the Closing Date as practical, the Cure Amounts to which no objections have been filed, or to which the Buyer and applicable non-debtor contract party have agreed as to the allowed Cure Amounts, shall be paid.

12. The Buyer shall only be required to assume the Assigned Contracts, subject to the applicable Cure Amounts, and the Debtor shall not be deemed to assume any executory contract that is not assigned to the Buyer.

13. There shall be no rent accelerations, assignment fees, increases or any other fees charged to the Buyer as a result of the assumption and assignment of any Assigned Contract.

14. Pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, all parties to the Assigned Contracts are forever barred and enjoined from raising or asserting against the Buyer any assignment fee, default, breach or claim or pecuniary loss, or condition to assignment, arising under or related to the Assigned Contracts existing as of the Closing or arising by reason of the Closing, except for any post-petition amounts that are Assumed Liabilities being assumed by the Buyer under the APA. Payment of the Cure Amounts shall be deemed to discharge the Debtor's obligation to: (i) cure, or provide adequate assurance that the Debtor will promptly cure, any defaults under the Assigned Contracts and (ii) compensate, or provide adequate assurance that the Debtor will promptly compensate any non-debtor party to the Assigned Contracts for any actual pecuniary loss resulting from any default under the Assigned Contracts.

15. In accordance with sections 365(b)(2) and (f) of the Bankruptcy Code, upon transfer of the Assigned Contracts to the Buyer, (i) the Buyer shall have all of the rights of the Debtor hereunder and each provision of such Assigned Contracts shall remain in full force and effect for the benefit of the Buyer notwithstanding any provision in any such Assigned Contract or in applicable law that prohibits, restricts or limits in any way such assignment or transfer, and(ii) no Assigned Contract may be terminated, or the rights of any party modified in any respect, including pursuant to any "change of control" clause, by any other party thereto as a result of the consummation of the Transactions.

16. The Debtor shall reject all executory contracts relating to the Distribution Systems that are not Assumed Contracts, pursuant to Section 365 of the Bankruptcy Code, which rejection shall be effective on the Closing Date by serving a Rejection Notice to the holders of those executory contracts that are not Assumed Contracts.

17. The transfer of the Assets to the Buyer pursuant to the APA and this Order constitutes a legal, valid, and effective transfer of the Assets, and shall vest the Buyer with the same right, title and interest of the Debtor in and to the Purchased Assets free and clear of all liens of any kind or nature whatsoever (but for the Assumed Liabilities and the Permitted Liens) notwithstanding any requirement for approval or consent by any entity (as defined in Section 101(15) of the Bankruptcy Code).

18. From and after the entry of this Order, the Debtor, and all third parties with notice of the sale shall not take or cause to be taken any action which would interfere with the transfer of the Assets to Buyer in accordance with the terms of this Order or the APA or the use and operation by the Buyer of the Assets.

19. The transfer of the Assets to the Buyer pursuant to the APA is an exchange for consideration by the Buyer constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession or the District of Columbia.

Additional Provisions

20. On the Closing Date of the Transactions, each of the Debtor's creditors, secured or otherwise, are authorized and directed to execute such documents and take all other actions as may be necessary to release their liens in the Assets, if any, as such Liens may have been recorded or may otherwise exist.

21. If any person or entity asserting a security interest has filed financing statements, mortgages, construction liens, mechanic's liens, judgment liens, *lis pendens*, or other documents or agreements evidencing liens or encumbrances with respect to the Assets, and has not delivered to the Debtor and/or the Buyer prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, and/or releases of all liens which the person or entity has with respect to any of the Assets then (a) the Debtor or the Buyer are hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Assets and (b)

the Buyer is hereby authorized to file, register, or otherwise record a certified copy of this Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all liens in the Assets of any kind or nature whatsoever.

22. Any notices required to be given to the Debtor's employees pursuant to any federal or state labor or similar laws shall be the sole responsibility of Debtor, and the Buyer shall have no liability for Debtor's failure to do so. Buyer shall have no obligation to pay wages, bonuses, vacation pay, severance pay, benefits of any kind (including without limitation accrued unpaid medical benefits), or incentives, or retention payments, workers compensation, or unemployment benefits or any other payment with respect to employees or former employees of the Debtor.

23. This Court shall retain exclusive jurisdiction to implement and effectuate the provisions of this Order and the APA and to resolve any issue or dispute concerning the interpretation, implementation or enforcement of this Order and the APA and any subsequent agreement as required to be entered into between the Debtor and the Buyer pursuant to this Order, or the rights and duties of the parties hereunder or thereunder, including, without limitation, any issue or dispute concerning the transfer of the Assets free and clear of liens, claims, interests or encumbrances.

24. Any stay, modification, reversal or vacation of this Order will not affect the validity of any obligation of the Debtor to the Buyer incurred under this Order. Notwithstanding any such stay, modification, reversal or vacation, all obligations incurred by the Debtor under this Order and the APA prior to the effective date of such stay, modification, reversal or vacation will be governed in all respects by the original provisions of this Order, and the Buyer is entitled to the rights, privileges and benefits granted in this Order with respect to all such obligations.

25. The transactions contemplated by the APA are undertaken by the Buyer in good faith, as that term is used in Section 363(m) of the Bankruptcy Code. Accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the transactions shall not affect the validity of the Transactions as to the Buyer, except to the extent such authorization is duly stayed pending such appeal prior to such consummation. The evidence presented or proffered has demonstrated that the Buyer is a purchaser in good faith of the Assets and is entitled to all of the protections afforded by Section 363(m) of the Bankruptcy Code.

26. The terms and provisions of this Order shall be binding in all respects upon and shall inure to the benefit of, the Debtor, its estate, and their creditors, the Buyer and its affiliates, successors and assigns, and shall be binding in all respects upon any affected third parties including, but not limited to, all persons asserting liens in such Assets, notwithstanding any subsequent appointment of any Chapter 11 or Chapter 7 trustee(s), upon which such terms and provisions likewise shall be binding.

27. Based upon the evidence presented or proffered, it has been determined that the Buyer shall not be deemed to (a) be the successor in interest of the Debtor; (b) have, de facto or otherwise, merged with or into the Debtor; or (c) be a continuation of the Debtor.

28. The failure specifically to include any particular provision of the APA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the APA be authorized and approved in its entirety. Likewise, all of the provisions of this Order are non-severable and mutually dependent.

29. The APA and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing to be signed by all parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtor's estate.

30. Nothing contained in any plan confirmed in this case or any Order of this Court confirming such plan shall conflict with or derogate from the provisions of the APA or the terms of this Order.

31. The Closing on the Transactions cannot occur without the authority of the state and local governmental jurisdictions from which the Debtor currently has the authority to operate its respective utilities. The Court acknowledges that obtaining such regulatory authority may take a number of months and accordingly, that the Debtor shall be required to continue to operate the Jellico Utility and the Three ABF Utilities until such transfers are approved by the Court.

32. As requested in the Motion, the Debtor is authorized to pay, from the proceeds of the Purchase Price with respect to the respective assets, the amounts owing to the state and local governments for taxes as identified in the motion in reduced amounts as agreed to by the Debtor and by such taxing authorities, up to the amounts as set forth in the Motion without further Order of this Court. Notwithstanding the foregoing, and except for any Permitted Liens, Buyer shall have no obligation to pay any remaining outstanding liabilities of Debtor with respect to any state, local or federal taxes.

33. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Order. In the event that all conditions precedent to closing have been met or waived under the APA, the Debtor and the Buyer are hereby authorized to consummate the Transactions upon entry of this Order or as soon as reasonably possible thereafter.

34. In the event that the Buyer does not timely perform, or otherwise fails to close on the Transactions contemplated by the APA, and without otherwise releasing the Buyer from any claims that the Debtor may have under the APA, the Winning Back-Up Bid of Powell Clinch shall automatically be deemed to be the highest and best bid with respect to the Jellico Utility, and the Debtor and Powell Clinch, shall be authorized, but neither required to, close on the sale of the Jellico Utility as is commercially reasonable without further order of this Court, on the terms and conditions set forth in the Winning Back-Up Bid, except as modified herein. Accordingly, in such event, the findings, orders and the provisions of paragraphs 1 through 35 of

this Order with respect to the Buyer and the APA and the consummation of the Transactions shall also be deemed to equally apply to the Winning Back-Up Bidder and the Winning Back-Up Bid on the sale of the Jellico Utility only. Notwithstanding, Powell Clinch's closing on the purchase of the Jellico Utility on the terms and conditions set forth in its Winning Back-Up Bid and herein shall then be at its option and it shall not be obligated to so close, unless it subsequently agrees to do so.

35. Debtor's counsel shall promptly return the Earnest Money Deposits of \$50,000 each that counsel received from Powell Clinch and Delta Natural Gas Company, Inc. of Westchester, Kentucky with their bids.

Copies to:

Default List

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(Counsel for Navitas Assets, LLC, Buyer/Winning Bidder)

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Cincinnati, OH 45250-5566

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Division of Collections
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Kentucky, City of Albany
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Byrdstown, TN 38549

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Byrdstown, TN 38549

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Utility Pipeline, Ltd
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West Virginia State Income Tax Dept.
Internal Audit Division
PO Box 1202
Charleston, WV 25324-1202

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COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
730 SCHENKEL LANE
POST OFFICE BOX 615
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(502) 564-3940

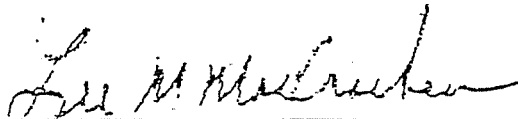
CERTIFICATE OF SERVICE

Re: Case No. 90-208
Ken Gas of Tennessee, Inc.
d/b/a Jellico Gas Utility, Inc.

I, Lee M. MacCracken, Executive Director of the Public Service Commission, do hereby certify that the enclosed attested copy of the Commission's Order in the above case was served upon the following by U. S. Mail on the 13th day of August, 1990.

Parties of Record:

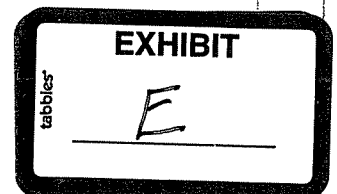
Mr. Walton R. Haddix
Mr. Robert C. Hazelrigg
Mr. Keith Bissell



Executive Director

LMM/cbg

Enclosure



COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

GAS SERVICE TO KENTUCKY CUSTOMERS)
BY KEN-GAS OF TENNESSEE, INC. d/b/a) CASE NO. 90-208
JELlico GAS UTILITY, INC.)

O R D E R

On February 6, 1989, Staff of the Kentucky Public Service Commission ("Commission") received a copy of CP88-387-000, an Order Determining Service Area issued by the Federal Energy Regulatory Commission ("FERC") on October 27, 1988. This Order is attached and marked Exhibit A. According to the FERC Order, Ken-Gas of Tennessee, Inc. ("Ken-Gas") proposes to build facilities which extend across the Kentucky/Tennessee border to supply gas to a local distribution system which it will construct in Jellico, Tennessee. Gas will be distributed by Ken-Gas directly to end-users, and there will be no sale for resale. Most of Ken-Gas's customers will reside in Tennessee; however, some of the prospective customers may be located in Whitley County, Kentucky.

Based upon the information available to the FERC, including the fact that Ken-Gas's local distribution operations in Kentucky and Tennessee are regulated by this Commission and the Tennessee Public Service Commission ("Tennessee PSC"), the FERC granted Ken-Gas a service area determination under section 7(f) of the Natural Gas Act. This determination pertains to service to the

city of Jellico, Tennessee, and its environs, Campbell County, Tennessee, and Whitley County, Kentucky. A section 7(f) determination means that the portion of Ken-Gas's operations that extend between the Kentucky/Tennessee border, which would ordinarily constitute interstate commerce, are jurisdictional to the appropriate state public service commission.

Since the FERC Order in CP88-387-000 referenced potential service to Whitley County, Kentucky, Commission Staff requested additional information from Ken-Gas and the Tennessee PSC to determine the status of the proposed project, the extent of proposed service to Kentucky residents, and to clarify certain jurisdictional issues with the Tennessee PSC. This information is attached and marked Exhibit B. In Docket No. U-87-7538, at the Tennessee PSC, Ken-Gas was granted a Certificate of Convenience and Necessity to construct and operate a natural gas distribution system to offer service within the corporate limits of Jellico, Tennessee, and the Oswego Industrial Park. In Docket No. U-87-7538, the Tennessee PSC also approved financing, revenue requirements, and rates for Ken-Gas. The design and construction of the Ken-Gas system, hereinafter referred to as Jellico Gas Utility, Inc. ("Jellico"), was required to comply with the Tennessee PSC's pipeline safety regulations, which include 49 CFR Part 192 (Federal Pipeline Safety Regulations).

Based upon information provided by Jellico, its gas is purchased from Delta Natural Gas, Inc. ("Delta"), a local distribution company with pipeline facilities and customers in central and south central Kentucky and jurisdictional to this Commission.

Jellico's gas supply is delivered through an eight-inch steel transmission line, originating in Kentucky approximately 1,000 feet from the Tennessee border and terminating at a point one mile north of Jellico, Tennessee, where the distribution system begins. This transmission pipeline is owned and operated by Jellico.

On February 1, 1990, Commission Staff met with Jellico officials and Glynn Blanton, manager of the Tennessee PSC's Gas Pipeline Safety Branch. Staff drove throughout the extent of the Jellico system, including two areas in Whitley County, Kentucky, where residents have requested gas service, the communities of Kentucky Hill and Black Oak. At the time of this visit, most of the distribution piping had been installed, and approximately 30 customers were receiving gas service. No pipe had been installed in either of the two Kentucky communities.

Mr. Blanton stated that his Staff had reviewed the construction specifications submitted by Ken-Gas in U-87-7538 and conducted periodic site inspections during the installation of the Jellico system. Based upon its review and inspections, the Tennessee PSC's Gas Pipeline Safety Branch has concluded that the design and installation of the Jellico system complies with the Tennessee PSC's gas safety regulations, including 49 CFR Part 192.

Prior to Commission Staff's February 1, 1990 site visit, Jellico had submitted information stating that whether or not Jellico offers service to the Kentucky communities of Kentucky Hill and Black Oak depends upon the regulatory treatment of such service by the Commission. See attachment marked Exhibit C. Gas service to residents in these two communities may be possible if

Jellico could remain under the jurisdiction of one regulatory commission. Jellico stated that if both the Kentucky and Tennessee Commissions imposed jurisdiction, the Kentucky residents would probably not be served. In Jellico's opinion, the costs of maintaining dual systems of accounts, filing dual annual reports, and rate cases would probably be greater than any potential benefits.

Jellico reiterated its position on February 14, 1990, concluding that it would not be economically feasible to serve the Kentucky residents if records were required by this Commission. However, Jellico is willing to offer service to the Kentucky Hill and Black Oak communities under the same terms and rates as approved by the Tennessee PSC for residents of Jellico, Tennessee. In this response, Jellico also provided two lists of prospective customers, 29 in Kentucky Hill and 28 in Black Oak. Jellico does not anticipate offering such service until sometime in 1991.

Following receipt of Jellico's initial statements regarding dual jurisdiction over Jellico's operations, Commission Staff contacted Delta regarding service to the two Kentucky communities. Delta currently serves Williamsburg which is located in central Whitley County. In its December 7, 1989 response, Delta stated it would not be feasible for Delta to directly serve the prospective customers in the Kentucky Hill and Black Oak communities. See attachment marked Exhibit D. However, Delta has no objection to Jellico serving these residents provided Jellico does not attempt to duplicate service provided by Delta.

The Commission's principal concern in this matter is that the Kentucky residents in the communities of Kentucky Hill and Black Oak have the opportunity to receive, if they desire, natural gas service; and that such service, if provided, is reliable, safe, and reasonably priced. In an effort to allow such an opportunity to occur, yet recognizing the only source from which such service can materialize, the Commission requested that the Tennessee PSC investigate the feasibility of extending its jurisdiction of Jellico to include any service Jellico provides to Kentucky Hill and Black Oak. The request was made based upon the combination of facts known: that the only source of gas service to these two communities is Jellico; the relatively small number of potential customers (approximately 57), and their proximity to Jellico, Tennessee; and that almost all of the Jellico system is physically located in Tennessee. Such jurisdiction would include rates, service, and safety. In its May 9, 1990 response, attached and marked Exhibit E, the Tennessee PSC advised that it had similar arrangements with other states contiguous to Tennessee and concluded that the Commission's proposal was feasible.

After review of the available information, pertinent statutes and regulations, and being otherwise sufficiently advised, the Commission finds that:

1. Jellico is a gas distribution utility subject to the jurisdiction of the Tennessee PSC. The Jellico system includes a transmission pipeline which begins in Whitley County, Kentucky, and terminates in Tennessee approximately one mile north of the city limits of Jellico, Tennessee.

2. The FERC has granted Ken-Gas a service area determination under section 7(f) of the Natural Gas Act to include the city of Jellico, Tennessee, and its environs, Campbell County, Tennessee, and Whitley County, Kentucky. The service area determination by the FERC means that delivery of gas by Jellico to its ultimate consumers, even if across state lines, is subject to the exclusive jurisdiction of the state commission in the state in which the gas is consumed.

3. In Docket No. U-87-7538, Ken-Gas was granted a Certificate of Convenience and Necessity to construct and operate a natural gas distribution system to offer service within the corporate limits of Jellico, Tennessee, and the Oswego Industrial Park.

4. Based upon its review in U-87-7538 of Jellico's construction specifications and subsequent periodic site inspections during the installation of the Jellico system, the Tennessee PSC's Gas Pipeline Safety Branch has determined that the design and installation of the Jellico gas system complies with the Tennessee PSC's gas pipeline safety regulations, which include 49 CFR Part 192 (Federal Pipeline Safety Regulations).

5. 807 KAR 5:022, this Commission's pipeline safety regulations, contains the same requirements found in 49 CFR Part 192.

6. Kentucky residents in two Whitley County communities, Kentucky Hill and Black Oak, both of which are immediately adjacent to the city limits of Jellico, Tennessee, have requested gas service from Jellico.

7. Jellico has concluded that gas service to the Kentucky residents referred to herein may be possible only if Jellico

remains under the jurisdiction of one regulatory commission. If Jellico offers such service, it cannot be provided until 1991.

8. Delta is the only Kentucky gas distribution utility jurisdictional to this Commission with facilities in Whitley County. However, Delta has stated it is not feasible for Delta to directly serve the prospective customers in Kentucky Hill and Black Oak.

9. With the relatively small number of Kentucky residents requesting gas service and their proximity to Jellico, Tennessee, and since virtually all of the Jellico gas system is physically located in Tennessee and represents the only source of natural gas to these residents, the existing jurisdiction of the Tennessee PSC over Jellico's operations should include any service provided to the Kentucky communities of Kentucky Hill and Black Oak.

IT IS THEREFORE ORDERED that:

1. Approval by the Tennessee PSC of Ken-Gas's construction and operation, financing, revenue requirements, and rates for the Jellico gas system shall be deemed compliance with this Commission's laws, rules, and regulations. Ken-Gas shall simultaneously file with this Commission every application it files with the Tennessee PSC. Ken-Gas shall file with this Commission every final order that the Tennessee PSC enters relating to its operations and rates within 10 days of the date of the Tennessee PSC final order.

2. Compliance with Tennessee PSC laws, rules, and regulations applicable to service and safety shall be deemed as


compliance with this Commission's laws, rules, and regulations applicable to service and safety.

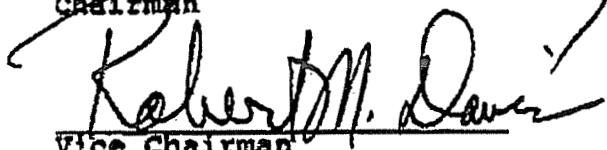
3. Prior to providing service to Kentucky residents, Jellico shall comply with KRS 278.160 by filing a copy of its tariff, which sets out the rates and services to be offered, as approved by the Tennessee PSC for adoption and ratification by this Commission. Any subsequent changes to its tariff shall be filed with this Commission for adoption and ratification within 10 days of the date of approval by the Tennessee PSC.

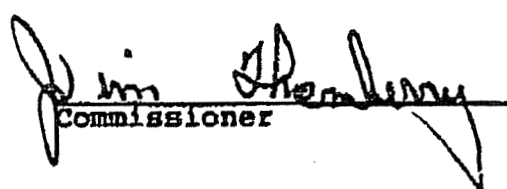
4. Ordering paragraphs 1-3 herein apply only to Jellico's proposed service to Kentucky residents in Kentucky Hill and Black Oak.

Done at Frankfort, Kentucky, this 13th day of August, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

SCANNED IMAGE #9008021

April 24, 1995:

Per Frankie Bertrand/Rebecca Goodman - not included on image file for case #90-208 were 5 items: .

1. EXHIBIT A - FERC order #CP88-387-000
2. EXHIBIT B - CERTIFICATE OF CONVENIENCE & NECESSITY #U-87-7538 (before Tennessee PSC)
3. EXHIBIT C - letter addressed to Ralph Dennis dated 15Jan90
4. EXHIBIT D - letter addressed to Ralph Dennis dated 07Dec89
5. EXHIBIT E - letter addressed to Lee M. McCracken dated 09May90

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Discussion

In previous cases, we have made a section 7(f) service area determination where the natural-gas company was primarily engaged in the local distribution of natural gas, but was subject to the Commission's jurisdiction because its facilities crossed state lines. We have considered four factors in determining whether a section 7(f) service area is appropriate: (1) whether the company makes sales for resale; (2) whether its rates are regulated by state or local agencies; (3) whether the company has an extensive transmission system; and (4) the concerns of other companies providing gas in the same area. 1/

After consideration of these criteria, we find it is appropriate to determine a service area for Ken-Gas' proposed distribution system. First, although the proposed facilities will extend across state lines in interstate commerce, the system will be operated essentially as a local distribution company. The gas will be distributed by Ken-Gas directly to end-users, and there will be no sale for resale. Further, Ken-Gas' operations are regulated by the Kentucky and Tennessee Public Service Commissions. Finally, the proposed transmission system includes approximately 19 miles of 2-inch to 4-inch pipeline, which is not extensive, and is the only system providing natural gas service in the area. Our determination of a service area will enable Ken-Gas to enlarge or expand its facilities to better serve its customers in the area without seeking further Commission approval.

Accordingly, we grant Ken-Gas a service area determination under section 7(f) of the Natural Gas Act to include the City of Jellico, Tennessee and its environs, Campbell County, Tennessee and Whitley County, Kentucky.

The Commission staff prepared an environmental assessment (EA) for the proposal by Ken-Gas. The staff found that the facilities would be constructed within existing road and utility rights-of-way, and Ken-Gas has received the necessary authorizations for the use of those right-of-ways. All disturbed areas would be reseeded after construction. There would be no

1/ See, e.g., Washington Gas Light Co., 28 F.P.C. 753 (1962); Blacksville Oil and Gas Co., 37 F.P.C. 502 (1967); National Fuel Gas Distribution Corp., 13 FERC ¶ 61,200 (1980); Great River Gas Co., 14 FERC ¶ 61,167 (1981); Shenendoah Gas Co., 16 FERC ¶ 61,087 (1981); Arkansas Oklahoma Gas Corp., 33 FERC ¶ 61,197 (1985), High Plains Natural Gas Company and Wheeler Gas, Inc., 41 FERC ¶ 61,364 (1987); and Associated Natural Gas Company, a Division of Arkansas Western Gas Company, et al., 43 FERC ¶ 61,304 (1988).

effect on cultural resources, or threatened or endangered species. Based on the finding in the EA, approval of this application does not constitute a major Federal action significantly affecting the quality of the human environment.

At a hearing held on October 26, 1988, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission orders:

Ken-Gas is hereby granted the service area determination it has requested pursuant to section 7(f) of the Natural Gas Act. Ken-Gas' service area is determined to include the City of Jellico, Tennessee and its environs, Campbell County, Tennessee, and Whitley County, Kentucky, as more fully described in the application.

By the Commission. Commissioner Langdon voted present.

(S E A L)

Lois D. Cashell

Lois D. Cashell,
Secretary.

RECEIVED

10-13-88

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
October 13, 1988 Nashville, Tennessee

RECEIVED
PUBLIC SERVICE COMMISSION

IN RE: APPLICATION OF KEN-GAS OF TENNESSEE, INC. FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE CONSTRUCTION OF A NATURAL GAS DISTRIBUTION SYSTEM, APPROVAL OF FINANCING AND CONSTRUCTION COSTS AND APPROVAL OF APPLICABLE RATES.

DOCKET NO. U-87-7538

ORDER

This matter is before the Tennessee Public Service Commission upon the application of Ken-Gas of Tennessee, Inc. for a Certificate of Convenience and Necessity as set forth in the above caption.

The matter was set for hearing and was heard on March 15, 1988 before Ralph B. Christian, II, the Administrative Judge. On September 16, 1988 the Administrative Judge issued his Initial Order recommending that the application be granted.

The Commission considered this matter at the Commission Conference held on October 4, 1988. It was concluded after careful consideration of the entire record, including the Administrative Judge's Initial Order and all applicable laws and statutes that the Administrative Judge's Initial Order should be approved and the authority granted. The Commission further ratifies and adopts the findings and conclusions of the Administrative Judge as its own.

IT IS THEREFORE ORDERED:

1. That the Administrative Judge's Initial Order dated September 16, 1988, in this docket is hereby ratified, adopted and incorporated by reference in this Order as fully as though copied verbatim herein, including the findings and conclusions of the Administrative Judge which the Commission adopts as its own.

2. That a Certificate of Convenience and Necessity to construct and operate a natural gas distribution system is hereby granted.

3. That within sixty (60) days of the substantial completion of construction, Ken-Gas of Tennessee, Inc. is directed to file its final costs in accordance with the Uniform System of Accounts with the Tennessee Public Service Commission.

4. That within thirty (30) days of substantial completion of construction, Ken-Gas of Tennessee, Inc. is directed to file a copy of the "As-Built" drawings and a signed statement that the construction has been satisfactorily completed in accordance with the contract plans and specifications with the Tennessee Public Service Commission.

5. That the proposed financing plan, its amounts, interests rates, and amortization periods as set forth herein, is hereby approved.

6. That the costs, as determined by the Tennessee Public Service Commission Staff and set forth in Schedules 1 through 9, are hereby approved.

7. That the rates as set forth herein are hereby approved.

8. That Ken-Gas of Tennessee, Inc. is hereby directed to file a tariff with the Tennessee Public Service Commission setting forth the rates approved herein before commencing operations.

9. That Ken-Gas of Tennessee, Inc. is hereby directed to file a copy of its General Rules and Regulations as prescribed by T.P.S.C. Rule 1220-4-1-.01 through .07.


10. That Ken-Gas of Tennessee, Inc. is hereby directed to maintain its accounting records in accordance with the methods

prescribed by the Uniform System of Accounting for Class C & D Utilities.


11. That Ken-Gas of Tennessee, Inc. is hereby directed to file a quarterly report, in the form of Quarterly Report Form PSC-3.04, within sixty (60) days of the end of the quarter covered by the report.

12. That any party aggrieved with the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within ten (10) days from and after the date of this Order.

13. That any party aggrieved with the Commission's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.



 COMMISSIONER



 COMMISSIONER

ATTEST:


 EXECUTIVE DIRECTOR

1. 111

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
Nashville, Tennessee
September 16, 1988

IN RE: THE APPLICATION OF KEN-GAS OF TENNESSEE, INC.,
FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY
FOR THE CONSTRUCTION OF A NATURAL GAS
DISTRIBUTION SYSTEM, APPROVAL OF FINANCING AND
CONSTRUCTION COSTS AND APPROVAL OF APPLICABLE
RATES.

DOCKET NO.: U-87-7536

ORDER

This matter is before the Tennessee Public Service Commission upon its own motion.

Having reviewed the initial Order in the above-captioned matter September 16, 1988, the Commission, pursuant to T.C.A. Section 4-5-315(b), hereby notifies all parties that the Commission will review all issues raised in the record of this proceeding before the Administrative Judge.

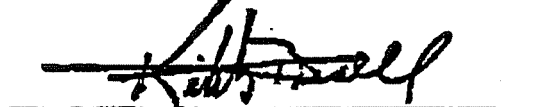
Any party may note his exceptions to the initial Order by filing a brief with the Commission within 5 days of the date of this Order. Reply briefs may be filed within 0 days after filing exceptions. Any party may request oral argument on the issues raised in the briefs.


Requests for extensions of time within which to file briefs must be made in writing to the Executive Director of this Commission and accompanied by a proposed order to be signed by the Chairman of this Commission. The request must

Indicate that copies of the request and proposed order have been served on all parties.


The Commission decision to review the Initial Order does not affect any party's right to petition the Administrative Judge to reconsider the Initial Order pursuant to T.C.A. Section 4-5-317. Should such a petition be filed, the time limits set forth in this Order for the submission for exceptions and replies be suspended and will begin to run ab initio from the date of final disposition of the petition to reconsider.


CHAIRMAN FRANK COCHRAN


COMMISSIONER KEITH BISSELL


COMMISSIONER STEVE HEWLETT

ATTEST TO:


PAUL ALLEN, EXECUTIVE DIRECTOR

16

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
Nashville, Tennessee
September 16, 1988

IN RE: THE APPLICATION OF KEN-GAS OF TENNESSEE, INC. FOR A
CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE
CONSTRUCTION OF A NATURAL GAS DISTRIBUTION SYSTEM,
APPROVAL OF FINANCING AND CONSTRUCTION COSTS AND
APPROVAL OF APPLICABLE RATES.

DOCKET NO. U-87-7538

INITIAL ORDER

This matter is before the Tennessee Public Service Commission upon the application of Ken-Gas Of Tennessee, Inc. (Ken-Gas) for a Certificate of Convenience and Necessity as set forth in the above caption.

The matter was heard March 15, 1988, in Nashville, Tennessee, before Ralph B. Christian, II, Administrative Judge, at which time the following appearances were entered:

APPEARANCES:

DAVID CROSS, Attorney at Law, P.O. Box 370, Albany, Kentucky 42602, appearing on behalf of the Applicant Ken-Gas of Tennessee, Inc.

D. BILLYE SANDERS, Assistant General Counsel, Tennessee Public Service Commission, 460 James Robertson Parkway, Nashville, Tennessee 37219-5477, appearing on behalf of the Commission Staff.

The matter is unopposed.

APPLICANT

Ken-Gas of Tennessee, Inc. by letter dated October 16, 1987, filed an application requesting that the Tennessee Public Service Commission issue a Certificate of Convenience and Necessity for the construction of a natural gas distribution system. The

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proposed, construction cost will be funded by equity investment and a commercial bank loan. Installation of the gas system will provide natural gas service to approximately 250 residential, 44 commercial, and 3 industrial customers following the first year of operation. The proposed natural gas distribution system has been designed to offer service within the corporate limits of Jellico, Tennessee and to the Oswego Industrial Park located approximately one mile from Jellico's city limits. Ken-Gas was awarded a franchise from the City of Jellico on the third reading of an Ordinance approved October 15, 1987. Said Ordinance is known as the Jellico Natural Gas Franchise Ordinance and is designated as Ordinance No. 4-87.

REVENUE REQUIREMENTS

Upon the filing of the instant application, the Public Service Commission Staff commenced its investigation of the application and requested additional information from the Company. Additionally, operating gas companies of similar size and type were analyzed to verify the accuracy and reasonableness of projections for the Jellico natural gas distribution system. The investigation produced nine schedules. After evaluation of the schedules, Ken-Gas accepted the Staff's projections. Following is a summary of the Tennessee Public Service Commission's findings.

Schedules 1 through 9 demonstrate the revenue requirements upon which the initial rate structure is based. The schedules were prepared by Commission Financial Analyst Magnal Thompson.

Purchased Gas

Natural gas for the Jellico natural gas distribution system will be supplied by Delta Natural Gas Company, Inc., of Winchester, Kentucky. Natural gas will be delivered through an

18

eight inch steel transmission line, located approximately one mile north of the Jellico city limits. The line will be tapped in Kentucky approximately 1000 feet from the Tennessee border.

Applicant provided the Public Service Commission with a copy of its Gas Service Agreement with Delta Natural Gas Company, Inc., dated July 22, 1988. The cost of gas to the Jellico natural gas system will be under the Seller's Tariff regulated by the Kentucky Public Service Commission. The initial rate determination by the Tennessee Public Service Commission Staff is based on a projected wholesale cost of purchased gas of \$3.50 per Mcf as shown on Schedule 3. Applicant, however, will be allowed to operate under Appendix A to TPSC Rule 1220-4-1-.12, *Standardized Requirements for a Purchased Gas Adjustment Provision*. A natural gas pipeline's tariff usually consists of two elements: demand charges and commodity charges. Herein, however, Jellico's gas supplier, Delta Gas, has included only commodity charges in its rate structure. Therefore, the PGA will be dependent only upon changes in the commodity rate as follows:

PGA = Current Commodity Charge minus Base Commodity Charge

The Current Commodity Charge will be the Delta Gas approved tariff rate with the Base Commodity Charge being the \$3.50 used by the Staff to compute Jellico's cost of gas in this proceeding. Moreover, since Jellico has only firm rates, this factor will be used to adjust all of its rates.

Franchise Fee

A franchise fee of one percent of all gross receipts from the sale of natural gas will be paid to the City of Jellico. The fee will be listed separately on utility bills and will not be considered as an expense for rate-making purposes. Ken-Gas will

act as a conduit for the tax that is collected from the gas customers and in turn is paid to the city.

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Depreciation/Amortization Expenses

Schedule 9 discloses that the Commission Staff has allowed \$1,000,000 for Plant-in-Service and \$24,239 for depreciation expense. The depreciation rates used on Schedule 9 are to be used by the utility to compute depreciation unless changed by the Public Service Commission.

Operating Expenses

Operating Expenses of \$347,640 as shown on Schedule 1 and on related Schedules 3, 4, 5, and 6, were accepted by Ken-Gas of Tennessee, Inc. Said amount has been used by the Commission in determining Jellico's rates.

Revenue Requirement Determination

Based upon operating expenses of \$347,640, Ken-Gas' revenue requirement for the first year of operation is \$424,425 and is shown on Schedule 2. The projected gross revenue amount is based upon Staff requested documents obtained from the Applicant. The documents included feasibility studies and analysis by United Cities Gas Company and by Barge, Waggoner, Sumner & Cannon, an independent engineering and planning firm in Nashville, Tennessee. On site evaluations were made by Ken-Gas to verify and augment the above studies.

Ken-Gas of Tennessee, Inc.'s revenue requirement is summarized below:

Revenue	\$424,425
Total Operating Expense	<u>347,640</u>
Net Operating Income	<u>\$ 76,785</u>

The rate of return is 7.68% on a rate base of \$1,000,346.

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FINANCING

The Applicant avers that long term financing will be provided by equity investment and by a commercial bank loan. Fentress County Bank of Jamestown, Tennessee will provide the loan. The loan interest rate will be 2.5% above the low New York prime rate as published in the Wall Street Journal. The term of the loan will be 20 or 25 years.

NET INVESTMENT RATE BASE/CAPITAL STRUCTURE

Rate Base

Based upon the cost of the Natural Gas Distribution System as determined herein and upon an allowance of 1/12 of the operating and maintenance expense, exclusive of Purchased Gas, Applicant's investment rate base has been determined as follows:

Plant-in-Service	\$1,000,000
Working Capital	<u>24,585</u>
Total	\$1,024,585
Less Accumulated Depreciation	<u>24,239</u>
Rate Base	<u>\$1,000,346</u>

The revenues allowed herein will produce a rate return of 7.68%

Capital Structure

Ken-Gas of Tennessee, Inc.'s proposed Capital Structure follows:

Debt (87%)	\$1,000,000
Equity (13%)	<u>145,570</u>
Total Capital	<u>\$1,145,570</u>

RATE DESIGN

The rates for Ken-Gas customers have been determined using a projected sales volume of 22,750 Mcf for residential users, 19,800 Mcf for commercial users, and 16,200 Mcf for industrial

users. Revenue projected from a combined sales volume of 58,750 Mcf at the rates set forth below is \$424,425.

	Customer Rates	
Residential		\$7.50 per Mcf
Commercial		\$7.50 per Mcf
Industrial		\$6.50 per Mcf

ENGINEERING CONSIDERATIONS

United Cities Gas Company's proposed piping configuration was submitted to the Public Service Commission by Ken-Gas along with its original application for a Certificate of Convenience and Necessity. The actual design and construction of the gas distribution system must comply with Public Service Commission Pipeline Safety Regulations as defined in TPSC Rule 1220-4-1-.09. The system will use SDR 11 plastic pipe for gas mains and service lines. Accordingly, requirements and joining procedures for making such plastic pipe joints and for performing inspection of those joints are to be reviewed and followed. Applicant should be directed to submit construction specifications and plans for installing the gas system to the Tennessee Public Service Commission for approval, prior to the start of construction.

WHEREFORE, having considered the testimony, the evidence of record, and the statutory criteria, the Administrative Judge finds that the application is in the public interest and should be granted.

T.C.A. Section 4-5-315 provides that all parties shall have an opportunity to appeal initial orders to the Commission. The Tennessee Public Service Commission, however, reviews all initial orders, thereby assuring review. All parties may file exceptions or replies to exceptions in the form of a brief setting forth specific issues. The exceptions and any replies thereto will be

considered by the Commission in its review. The Commission will determine the matter in a regularly scheduled Commission conference. Affected parties may then seek reconsideration of the Commission's final order or may appeal the final order to the Court of Appeals, Middle Division, within 60 days of the final order.

This Initial Order is prepared in conformity with the Tennessee Uniform Administrative Procedures Act, and T.C.A. Section 4-6-101, et seq. Procedures whereby parties seek review, stay, or reconsideration are found in T.C.A. Sections 4-6-315 through 318. Judicial review of Commission orders is described in T.C.A. Section 4-6-322.

IT IS THEREFORE ORDERED:

1. That the application of Ken-Gas Of Tennessee, Inc. be granted for a Certificate of Convenience and Necessity for the construction of a natural gas distribution system.

2. That within 60 days of the substantial completion of construction, Ken-Gas of Tennessee, Inc. is directed to file its final costs in accordance with the Uniform System of Accounts with the Tennessee Public Service Commission.

3. That within 30 days of the substantial completion of construction, Ken-Gas of Tennessee, Inc. is directed to file a copy of the "As-Built" drawings and a signed statement that the construction has been satisfactorily completed in accordance with the contract plans and specifications with the Tennessee Public Service Commission.

4. That the proposed financing plan, its amounts, interest rates, and amortization periods as set forth herein, is hereby approved.

5. That the costs, as determined by the Tennessee Public Service Commission Staff and set forth in Schedules 1 through 9, are hereby approved.


6. That the rates as set forth herein are hereby approved.

7. That Ken-Gas of Tennessee, Inc. is hereby directed to file a tariff with the Tennessee Public Service Commission setting forth the rates approved herein.

8. That Ken-Gas of Tennessee, Inc. is hereby directed to file a copy of its General Rules and Regulations as prescribed by TPSC Rule 1220-4-1-.01 through .07.

9. That Ken-Gas of Tennessee, Inc. is hereby directed to maintain its accounting records in accordance with the methods prescribed by the Uniform System of Accounting for Class C & D Utilities.

10. That Ken-Gas of Tennessee, Inc. is hereby directed to file a quarterly report, in the form of Quarterly Report Form PSO-3.04, within 60 days of the end of the quarter covered by the report.


RALPH E. CHRISTIAN, II
ADMINISTRATIVE JUDGE

Before the
PUBLIC SERVICE COMMISSION
of the
STATE OF TENNESSEE

RECEIVED

JUL 24 1989
DIVISION OF UTILITY
ENGINEERING & SERVICES

in re:

KEN GAS OF JELICO
(Docket No. U-87-7538)

RECEIVED
PUBLIC SERVICE COMM.
EXECUTIVE DIRECTOR
MAR 2 1988

Testimony

of

Magnal Thompson

March 15, 1988

1 Q. State your name for the record please.

2 A. My name is Magnal Thompson.

3 Q. What is your position with the Tennessee Public Service
4 Commission?

5 A. I am employed as a Financial Analyst with the
6 Commission.

7 Q. How long have you been employed with the Commission?

8 A. Two years.

9 Q. Would you briefly describe your duties as a Financial
10 Analyst?

11 A. During my two year employment I have participated in
12 several rate case audits of utilities subject to the
13 Commission's jurisdiction, as well as the preparation
14 of exhibits for Commission hearings. I have also been
15 involved with the audit and analysis of the various
16 financial reports filed with the Commission.

17 Q. What is your educational background and what degrees
18 have you earned?

19 A. I have earned a Bachelor of Business Administration
20 degree with a major in Accounting and a Masters of
21 Business Administration degree from Tennessee State
22 University in May 1984 and May 1986, respectively.

23 Q. What is the purpose of your testimony in this case?

24 A. The purpose of my testimony is to present information
25 and supporting exhibits to the Commission to assist
26 them in deciding on the petition for a CCN by Ken Gas
27 of Tennessee to build a natural gas system in Jellico,

1 Tennessee and begin operations within Jellico,
2 Tennessee.

3 Q. Are there any controversial issues in this case?

4 A. No. The Company has decided to adopt my exhibits as
5 their own.

6 Q. What test period did you use in considering the
7 Company's request?

8 A. Please allow me to give a brief explanation of a test
9 period for better understanding. A test period is
10 generally, a twelve month period of time in which a
11 company's financial results are analyzed and adjusted,
12 if necessary, to test a company's earnings under
13 present or, in the case of Ken Gas, proposed rates. In
14 this case the Staff decided on a five year period of
15 time. The Staff felt that in order to analyze and test
16 the proposed rates of the Company a longer test period
17 was necessary. This process of analyzing the results
18 of operations assists the Commission in determining
19 fair and reasonable rates on which the Company will be
20 allowed an opportunity to earn a reasonable return on
21 its investments.

22 Q. You referred to the term "fair rate of return". What
23 is its definition and its importance to the Commission?

24 A. A rate of return is the compensation for capital
25 required by the utility to provide service to the
26 customer. A "fair rate of return" is a return,
27 expressed as a percentage, approximating the cost of

1 the capital. And, the cost of this capital is the
2 price that is paid for its use. This means that the
3 fair rate of return is what capital invested would be
4 able to earn if invested under similar conditions
5 elsewhere.

6 In the context of regulation of utilities, a fair rate
7 of return is the percentage figure multiplied by rate
8 base which produces the return available to cover
9 interest on debt and dividends on preferred and common
10 stock.

11 Generally, the Commission would consider what
12 constitutes a fair rate of return and adjust rates so
13 as to allow investors to earn this rate of return. The
14 Company failed to show calculations for what it
15 considered a fair rate of return that it should be
16 allowed the opportunity to earn. The staff Economist
17 computed an overall return of 11.95% and an equity
18 return of 15%.

19 Q. Would you please summarize the Company's request?

20 A. The Company requested a Certificate of Convenience and
21 Necessity to install and operate a natural gas
22 distribution system within the city limits of Jellico,
23 Tennessee. Also, it requested approval of a rate to
24 charge customers using the gas. Finally, it requested
25 approval of the construction cost to build the system
26 and the financing arrangements necessary to pay for the
27 debt.

1 Q. Is there a need for a natural gas system in Jellico,
2 Tennessee?

3 A. Yes, the City of Jellico is a municipal corporation
4 located in Campbell County, Tennessee and is without a
5 natural gas distribution system. There is currently a
6 need and demand for a natural gas distribution system
7 to provide natural gas to the citizens of Jellico. In
8 order to supply the need for natural gas the Jellico
9 City Counsel has awarded a franchise to Ken Gas of
10 Tennessee, Inc. for the intent and purpose of
11 installing and operating a natural gas distribution
12 system within the city limits.

13 Q. What is your recommendation to this Commission?

14 A. I recommend that this Commission after viewing the
15 Company's and Staff's testimony and exhibits grant a
16 Certificate of Convenience and Necessity to Ken Gas of
17 Tennessee, Inc. to operate a natural gas distribution
18 system within the city limits of Jellico, Tennessee.

19 Q. How would you like to present your exhibits with their
20 adjustments to the Commission?

21 A. As there are no controversial issues between the
22 Company and myself, I would like to summarize each
23 exhibit and provide a brief explanation for adjustments
24 of material importance.

25 Schedule 1 - Shows the forecasted earnings for the
26 first five years of operation.

1 Schedule 2 - Shows for the initial five years of
2 operations total sales volume for each class of
3 customer priced out using the proposed rates. This
4 provided total revenues from gas sales for the five
5 years.

6 Schedule 3 - Purchase gas was computed based on the
7 projected sales volumes multiplied by the gas cost per
8 Mcf. Total cost of gas was then adjusted for loss and
9 unaccounted for gas at a reasonable rate of 2%. This
10 provided the total cost of gas purchased.

11 Schedule 4 - Other operating expenses of the Company
12 were found to be fair and reasonable by the Staff and
13 were adopted as presented.

14 Schedule 5 - Shows other operating taxes that the
15 Company is required by law to pay as a result of doing
16 business.

17 Franchise Tax is a tax imposed on corporations for
18 the privilege of engaging in business within the State
19 of Tennessee. The franchise tax shown was computed by
20 applying the statutory franchise tax rate of \$.25 per
21 \$100 to the net utility plant in service at the end of
22 the Company's fiscal year.

23 Gross Receipts is another tax that corporations
24 pay for the privilege of conducting business. Gross
25 receipts was computed on the total revenues received
26 less the applicable exemption for gas companies of
27 \$5000 multiplied by the statutory gross receipt rate of

1 3%. Generally, gross receipts taxes are computed on
2 prior year total gross receipts and payable in the
3 current year. But for simplistic purposes, gross
4 receipts taxes are calculated on the current total
5 revenues.

6 PSC Fees, public utilities operating within the
7 State of Tennessee and subject to the control and
8 jurisdiction of the Commission must pay a fee for the
9 inspection, control, and regulation of the company.
10 The fee is based on total revenues less a \$5000
11 exemption multiplied by the statutory rate of 3%.

12 Payroll Taxes, utilities like other employers are
13 required to pay social security and unemployment taxes
14 on the wages and salaries paid to their employees. The
15 Company's payroll tax was computed based on its
16 projected three (3) employees multiplied by the
17 applicable state and federal unemployment tax rates and
18 social security tax rate.

19 Property Tax is based on appraised net book value
20 of the property in service, multiplied by the
21 applicable statutory, equalization, city, and county
22 rates. The Company's property tax shown was computed
23 based on the assessed value of its property by the TPSC
24 Assessment Division. In reviewing the Company's filed
25 financial statements the Staff noted that the Company
26 did not show operating other taxes as an expense of
27 conducting business. The Staff has corrected this by

1 the inclusion of other operating taxes in its operating
2 expense section as shown on Schedule 1.

3 Schedule 6 - Details the Staff's calculation of Federal
4 Income Tax and Tennessee Excise Tax for the first five
5 years of operations. The Staff included the 5% surtax
6 in year 5 placed on taxable income over \$100,000.
7 Interest expense on the loan was computed by
8 multiplying the projected yearly rate base by the
9 weighted cost of debt. Because interest expense is tax
10 deductible it must be deducted before arriving at
11 taxable income.

12 After arriving at taxable income, the Staff computed
13 excise tax using the statutory rate of 6% as shown on
14 line 7. Next, the Staff computed FIT using statutory
15 rates of 15% for taxable income up to \$50,000, 25% for
16 income over \$50,000 and up to \$75,000 and 34% for
17 income over \$75,000.

18 Schedule 7 - Shows the estimated rate base for the
19 first five years of operations. Line 1, Utility Plant
20 in Service \$1,000,000 represents the Company's
21 estimated cost for the natural gas system in Jellico.
22 Line 2, Working Capital is a cash working capital
23 allowance that is included in the rate base to meet the
24 day to day cost of providing services to the customer.
25 Line 4, Accumulated Depreciation represents the amount
26 of depreciation which has been accumulated through

1 depreciation expense over the lives of the various
2 plant items included in utility plant in service.
3 After considering all of the above items, the Staff
4 estimated the rate base for the first five years of
5 operations as shown on Schedule 7. Rate base
6 represents the investment on which the Company should
7 be allowed an opportunity to earn a fair rate of
8 return.

9 Schedule 8 - Shows the capital structure of Ken Gas of
10 Jellico. The Commission's staff Economist estimated a
11 fair rate of return to be 11.95%. This consists of
12 87.29% debt at a cost of 11.50% and of 12.71% equity at
13 a cost of 15%.

14 Schedule 9 - Details the depreciation expense schedule
15 as computed by the Commission's staff Engineer. Total
16 depreciation expense was computed to be ~~\$26,239~~ ^{\$24,239 AS} with a
17 composite rate of .024239.

18 Q. Does this conclude your testimony?

19 A. Yes.

KEN-GAS OF JELICO
FORECAST OF EARNINGS
For the Initial Five Years of Operation

Schedule 1

Line No.		1988-89	1989-90	1990-91	1991-92	1992-93
	OPERATING REVENUES A/					
1	Residential Revenues \$	170,625	204,750	235,463	259,350	285,285
2	Commercial Revenues	148,500	178,875	205,875	226,125	249,750
3	Industrial Revenues	105,300	140,400	175,500	175,500	210,600
4	Total Revenues \$	424,425	524,025	616,838	660,975	745,635
	OPERATING EXPENSES					
5	Purchase Gas B/ \$	209,738	259,718	306,467	327,476	370,345
6	Salaries & Wages G/	34,000	35,300	35,300	35,300	35,300
7	Controller G/	12,000	12,500	12,500	12,500	12,500
8	Depreciation C/	24,239	24,239	24,239	24,239	24,239
9	Office Rent G/	3,600	3,600	3,600	3,600	3,600
10	Insurance G/	4,000	4,000	4,000	4,000	4,000
11	Truck Expense G/	3,600	3,600	3,600	3,600	3,600
12	Other Operating Exp. D/	28,088	29,432	32,039	34,221	36,308
13	Other Taxes E/	28,375	29,660	30,853	31,389	32,472
14	Excise Tax F/	0	1,410	4,066	5,424	7,863
15	Federal Income Tax F/	0	3,314	10,925	17,139	31,292
16	Total Oper. Expenses \$	347,640	406,773	467,589	498,888	561,518
17	NET OPERATING INCOME \$	76,785	117,252	149,248	162,087	184,117
18	RATE BASE H/ \$	1,000,346	980,773	960,887	938,819	918,565
19	RATE OF RETURN (L17/L18)	7.68%	11.96%	15.53%	17.26%	20.04%

A/ Schedule 2.
B/ Schedule 3.
C/ Schedule 9.
D/ Schedule 4.
E/ Schedule 5.
F/ Schedule 6.
G/ Company's Workpapers.
H/ Schedule 7.

KEN-GAS OF JELICO
Projected Revenue
For the Initial Five Years of Operation

Line No.	Customers	Price per MCF	No. of Customers	Sales Vol. Per Customer	Total Sales Vol. (MCF)	Revenues (Col. 1*Col. 4)
1	Residential	\$ 7.50	250	91	22,750	\$ 170,625
2	Commercial	\$ 7.50	44	450	19,800	148,500
3	Industrial	\$ 6.50	3	5,400	16,200	105,300
4	Year 1 Total		297	5,941	58,750	\$ 424,425
5	Residential	\$ 7.50	300	91	27,300	\$ 204,750
6	Commercial	\$ 7.50	53	450	23,850	178,875
7	Industrial	\$ 6.50	4	5,400	21,600	140,400
8	Year 2 Total		357	5,941	72,750	\$ 524,025
9	Residential	\$ 7.50	345	91	31,395	\$ 235,463
10	Commercial	\$ 7.50	61	450	27,450	205,875
11	Industrial	\$ 6.50	5	5,400	27,000	175,500
12	Year 3 Total		411	5,941	85,845	\$ 616,838
13	Residential	\$ 7.50	380	91	34,580	\$ 259,350
14	Commercial	\$ 7.50	67	450	30,150	226,125
15	Industrial	\$ 6.50	5	5,400	27,000	175,500
16	Year 4 Total		452	5,941	91,730	\$ 660,975
17	Residential	\$ 7.50	418	91	38,038	\$ 285,285
18	Commercial	\$ 7.50	74	450	33,300	249,750
19	Industrial	\$ 6.50	6	5,400	32,400	210,600
20	Year 5 Total		498	5,941	103,738	\$ 745,635

KEN-GAS OF JELLICO
Cost of Purchased Gas
For the Initial Five Years of Operation

Line No.		<u>1988-89</u>	<u>1989-90</u>	<u>1990-91</u>	<u>1991-92</u>	<u>1992-93</u>
1	MCF per Year	58,750	72,750	85,845	91,730	103,738
2	Gas Cost per MCF	\$ 3.50	\$ 3.50	\$ 3.50	\$ 3.50	\$ 3.50
3	Cost of Gas	\$ 205,625	\$ 254,625	\$ 300,458	\$ 321,055	\$ 363,083
4	Loss & Unaccounted for Gas (Computed at 2%)	2.00%	2.00%	2.00%	2.00%	2.00%
		\$ 4,113	\$ 5,093	\$ 6,009	\$ 6,421	\$ 7,262
5	Total Cost of Gas	\$ 209,738	\$ 259,718	\$ 306,467	\$ 327,476	\$ 370,345

SOURCE: Company's Workpapers and Contract Agreement with Delta Natural Gas Company, Inc.

KEN-GAS OF JELICO
Other Operating Expenses
For the Initial Five Years of Operation

Line No.		1988-89		1989-90		1990-91		1991-92		1992-93
1	Telephone	\$ 1,200	\$	1,200	\$	1,200	\$	1,500	\$	1,500
2	Utilities	1,200		1,200		1,300		1,300		1,400
3	Billing Exp.; Supplies	6,000		6,000		6,500		6,500		7,000
4	Printing, Booklets	4,000		3,000		2,500		2,500		2,000
5	Travel, Training	1,200		1,200		1,500		1,500		1,500
6	License & Dues	1,000		1,000		1,000		1,000		1,000
7	Miscell. Exp. @ 1%	4,244		5,416		6,519		6,961		7,954
8	Repairs @ .5%	2,122		2,708		3,260		3,480		3,977
9	Bad Debts @ .5%	2,122		2,708		3,260		3,480		3,977
10	Professional Fees	5,000		5,000		5,000		6,000		6,000
11	Total Other Expenses	\$ 28,088	\$	29,432	\$	32,039	\$	34,221	\$	36,308

Source: Company's Workpapers.

KEN-GAS OF JELICO
Total Other Operating Taxes
For the Initial Five Years of Operation

Line No.		1988-89	1989-90	1990-91	1991-92	1992-93
1	FRANCHISE TAX	\$ 2,440	\$ 2,380	\$ 2,320	\$ 2,260	\$ 2,200
2	GROSS RECEIPTS	4,404	5,450	6,424	6,888	7,777
3	PSC FEES	1,268	1,567	1,846	1,978	2,232
4	PAYROLL TAXES	2,725	2,725	2,725	2,725	2,725
5	PROPERTY TAX	17,538	17,538	17,538	17,538	17,538
6	TOTAL TAXES	\$ <u>28,376</u>	\$ <u>29,660</u>	\$ <u>30,853</u>	\$ <u>31,389</u>	\$ <u>32,472</u>

NOTE: Excludes Excise & Federal Income Taxes.
SOURCE: Staff's Workpapers.

KEN-GAS OF JELLICO
Federal Income Tax & Excise Tax
For the Initial Five Years of Operation

Schedule 6

Line No.			1988-89		1989-90		1990-91		1991-92		1992-93
1	Revenues	A/ \$	424,425	\$	524,025	\$	616,838	\$	660,975	\$	745,635
	Less:										
2	Operating Expenses	A/ \$	319,265		372,388		421,745		444,936		489,891
3	Other Taxes	A/	28,376		29,660		30,853		31,389		32,472
4	Interest Expense	B/	100,435		98,470		96,473		94,257		92,224
5	Taxable Income	\$	(23,650)	\$	23,507	\$	67,766	\$	90,393	\$	131,048
6	Excise Tax Rate		6.00%		6.00%		6.00%		6.00%		6.00%
7	Excise Tax	\$	(1,419)	\$	1,410	\$	4,066	\$	5,424	\$	7,863
8	Taxable Income	\$	(22,231)	\$	22,096	\$	63,700	\$	84,969	\$	123,185
9	FIT Rate up to		15.00%		15.00%		15.00%		15.00%		15.00%
10	1st \$50,000										
11	FIT at 15% Rate	\$	(3,335)	\$	3,314	\$	7,500	\$	7,500	\$	7,500
12	Taxable Income over						13,700		25,000		25,000
	1st \$50,000										
13	FIT Rate over \$50,000						25.00%		25.00%		25.00%
	& up to \$75,000										
14	FIT at 25%					\$	3,425	\$	6,250	\$	6,250
15	Taxable Income over										
	\$75,000								9,969		48,185
16	FIT Rate over \$75,000								34.00%		34.00%
17	FIT at 34%							\$	3,389	\$	16,383
18	Surtax of 5% over \$100,000									\$	1,159
19	Total FIT	\$	(3,335)	\$	3,314	\$	10,925	\$	17,139	\$	31,292

A/ Schedule 1.

B/ Company's Projected Yearly Rate Base * Weighted Cost of Debt.
 (Schedule 7 & Schedule 8).

KEN-GAS OF JELICO
RATE BASE
For the Initial Five Years of Operation

Schedule 7

Line No.		1988-89	1989-90	1990-91	1991-92	1992-93
<u>ADDITIONS</u>						
1	Plant in Service A/ \$	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
2	Working Capital C/	24,585	29,012	33,126	35,058	38,804
3	Total Additions \$	1,024,585	1,029,012	1,033,126	1,035,058	1,038,804
<u>DEDUCTIONS</u>						
4	Accum. Depreciation B/ \$	24,239	48,239	72,239	96,239	120,239
5	Rate Base \$	1,000,346	980,773	960,887	938,819	918,565
A/ Company's Workpapers.						
B/ Staff's Workpapers.						
C/ Working Capital:						
1	Total Operating Exp. \$	347,640	406,773	467,589	498,888	561,518
Less:						
2	FIT	0	3,314	10,925	17,139	31,292
3	Other Taxes	28,376	31,071	34,919	36,813	40,335
4	Depreciation	24,239	24,239	24,239	24,239	24,239
5	Total \$	295,026	348,149	397,506	420,697	465,652
6	Working Capital (L.5 / 12 mths.) \$	24,585	29,012	33,126	35,058	38,804

KEN-GAS OF JELICO
Capital Structure
For the Initial Five Years of Operation

Line No.		Capital Structure	% of Capital	Cost Rate	Weighted Cost
1	Long-Term Debt	\$ 1,000,000 A/	87.29%	11.50%A/	10.04%
2	Common Stock	145,570 A/	12.71%	15.00%B/	1.91%
3	Total	\$ 1,145,570 =====	100.00% =====		11.95% =====

A/ Company's Workpapers.

B/ Staff Economist's equity cost rate estimation.

KEN-GAS OF JELICO
 Depreciation Expense Schedule
 For the Initial Five Years of Operation

Line No.	Plant Accounts	Investment	Rate	Average Life	Depreciation Expense
1	Receiving Station	\$ 37,500	3.00%	33 years	\$ 1,125
2	District Regulator	3,500	3.00%	33 years	105
3	Distribution Mains	740,353	2.00%	50 years	14,807
4	Service Lines	116,025	2.50%	40 years	2,901
5	Meters	21,180	3.00%	33 years	635
6	Service Regulators	4,942	3.00%	33 years	148
7	Industrial Sets	6,000	3.00%	33 years	180
8	Case 580 Backhoe	37,500	6.70%	15 years	2,513
9	Service Truck	10,500	10.00%	10 years	1,050
10	Fusing Machine, Tools & Equipment	17,500	3.00%	33 years	525
11	Computer & Office Equipment	5,000	5.00%	20 years	250
12	Total	\$ 1,000,000 =====			\$ 24,239 =====

* Composite Rate 0.024239

SOURCE: Mr. Ted Tingley, Commission's Engineer.

Jellico Gas Utility, Inc.

P.O. Box 119
Jellico, TN 37762-0119
(615) 784-2120

January 15, 1990

RECEIVED

JAN 18 1990

DIVISION OF UTILITY
ENGINEERING & SERVICES

Mr. Ralph Dennis
Kentucky Public Service Commission
P. O. Box 615
Frankfort, Kentucky 40602

Pending O

Re: Jellico, TN natural gas system

Dear Mr. Dennis:

In response to your request for information several residents of Jellico that live in Kentucky just across the Tennessee state line have requested natural gas service.

Natural gas for the Jellico gas system is supplied by Delta Natural Gas Company, Inc. from an M/R station in Kentucky. A 7(f) exemption was issued by FERC to transport natural gas across the Kentucky-Tennessee border.

Mr. Earnest F. Burke, Gas Safety Inspector for the Tennessee Public Service Commission is the inspector for the gas system. His office phone is (615) 741-2844 and home phone is (615) 395-4655.

If agreeable with the Kentucky Public Service Commission natural gas will be supplied to the Kentucky residents under the same conditions as the residents in Jellico, Tennessee. This would have to be subject to Tennessee Public Service Commission approval and acceptance.

After your planned February 1, 1990 inspection visit to Jellico additional information will be provided if needed.

Your assistance and consideration in this matter is appreciated.

Respectfully yours,

Walton R. Haddix
Walton R. Haddix

cc Opal Leach

enclosure



Delta Natural Gas Company, Inc.

5017 Lexington Road
Winchester, Kentucky 40391
803-744-8171

December 7, 1989

RECEIVED

DEC 12 1989

DIVISION OF
ENGINEERING SERVICES

Pending

Mr. Ralph E. Dennis
Manager, Gas Branch
Public Service Commission
730 Schenkel Lane
P. O. Box 615
Frankfort, KY 40602

Dear Ralph:

I am pleased to respond to your letter of November 13, 1989 regarding Jellico Gas Utility's interest in serving certain residents in Kentucky.

I have recently talked with Mr. Earl Holsapple of Jellico Gas Utility and he has informed me that there may be as many as fifty (50) residents of Kentucky that could be feasibly served by Jellico Gas Utility. It would not be feasible for Delta to directly serve these prospective customers.

Delta has no objection to Jellico Gas Utility serving customers in Kentucky provided that Jellico Gas Utility does not attempt to duplicate service provided by Delta. It is our feeling that the question of jurisdiction should be determined by the respective Public Service Commissions and Delta has no opinion on this issue.

We encourage the respective Public Service Commissions to resolve this issue in such a manner that residents of the Jellico area will not be discouraged from obtaining natural gas service.

We appreciate the opportunity to respond and if I can be of any further assistance please contact me at your convenience.

Sincerely,

Robert C. Hazelrigg
Vice President
Marketing and Public Relations

TENNESSEE PUBLIC SERVICE COMMISSION
 460 JAMES ROBERTSON PARKWAY
 NASHVILLE, TENNESSEE 37243-0505

KEITH BISSELL, CHAIRMAN
 STEVE HEWLETT, COMMISSIONER
 FRANK COCHRAN, COMMISSIONER



PAUL ALLEN, EXECUTIVE DIRECTOR
 HENRY M. WALKER, GENERAL COUNSEL

May 9, 1990

RECEIVED

MAY 29 1990

PUBLIC SERVICE
 COMMISSION

Mr. Lee M. McCracken
 Executive Director
 Kentucky Public Service Commission
 730 Schenkel Lane
 P.O. Box 615
 Frankfort, KY 40602

Pen-0

Re: Jellico Gas Utility, Inc.

Dear Mr. McCracken:

I have reviewed your letter which proposes that the Tennessee Public Service Commission extend its jurisdiction of Jellico Gas Utility, Inc. to approximately 57 perspective customers in Kentucky. We have had similar arrangements with Commissions in other states contiguous to Tennessee and believe that this proposal is feasible. I recommend that the Kentucky Commission issue an order giving Jellico Gas Utility authority to operate in the proposed territory pursuant to the rates and terms approved by the Tennessee Commission. We would regulate the entire system as a whole including rates, service and safety. When we issue an order with respect to the company, it could be sent to your Commission for ratification with respect to the Kentucky service. I see no problem with the Kentucky PSC reviewing the situation periodically to determine if it wishes to reassert jurisdiction over the Kentucky customers.

I am referring the matter to Glynn Blanton, our Director of Gas Pipeline Safety and D. Billye Sanders, Assistant General Counsel to continue to work with you on the details.

Sincerely,


 Keith Bissell
 Chairman

c: Glynn Blanton
 D. Billye Sanders
 Walton Haddix, Jellico Gas Utility, Inc.
 Paul Allen, Executive Director
 Hal Novak, Accounting Division

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

RECEIVED
2010/01/17 PM 1:20
TRAFFIC ROOM

JOINT PETITION OF NAVITAS TN NG,)
LLC AND GASCO DISTRIBUTION)
SYSTEMS, INC. FOR APPROVAL OF A)
TRANSFER OF CONTROL AND)
AUTHORITY OF GAS UTILITY)
SYSTEMS OF GASCO DISTRIBUTION)
SYSTEMS, INC., CHAPTER 11 DEBTOR)
IN POSSESSION)

Docket No. 10-00220

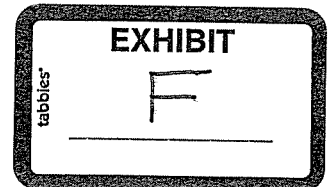
JOINT PETITION

COMES NOW, Joint Petitioners Navitas TN NG, LLC¹ ("Navitas"), by and through counsel, and Gasco Distribution Systems, Inc.², through its duly authorized officer, and hereby requests, pursuant to T.C.A. §§ 65-4-113, 65-4-107, 65-4-112 and the Byrdstown Natural Gas Franchise Ordinance of 2000, an Order from the Tennessee Regulatory Authority (the "Authority") for approval of the transfer of control of certain gas utility systems, the assignment of certain franchise agreements, and the accompanying authority to provide retail natural gas utility services from Gasco Distribution Systems, Inc. to Navitas in Jellico, Campbell County and Whitley County, Kentucky³, Byrdstown, Pickett County and Fentress County, Tennessee, deriving from the Certificate of Public Convenience and Necessity issued by the Authority's predecessor, the Tennessee Public Service Commission and related orders, approvals and actions of the Authority or its predecessor. In support of this Petition, Joint Petitioners state as follows:

¹ A Corporate Resolution of Navitas Assets, LLC assigning all rights and privileges under the Asset Purchase Agreement to Navitas is attached hereto as **Exhibit A**.

² While this is a joint petition, the representations concerning Navitas and NALLC as defined herein are made by them, the representations made by Gasco are made by it, and the representations made with respect to the bankruptcy of Gasco and the sale of its assets to NALLC or Navitas are jointly made by the parties.

³ By Order of the Public Service Commission, Commonwealth of Kentucky, dated August 13, 1990, Gasco Distribution Systems, Inc.'s service to Kentucky residents in Kentucky Hill and Black Oak in Whitley County, Kentucky is effective under the jurisdiction of the Authority, as part of the Jellico Distribution System. A true and exact copy of the Kentucky Public Service Commission Order is attached hereto as **Exhibit B**.



I. BUYER AND SELLER

1. Navitas TN NG, LLC (“Navitas”) is a Tennessee limited liability company. Navitas’ principal place of business is 18218 East McDermott, Irvine, California 92614. Navitas Assets, LLC (“NALLC”) is the parent company of Navitas and is a Delaware limited liability company.

2. Gasco Distribution Systems, Inc. (“Gasco”) is an Ohio Corporation with its principal place of business located at 4445 East Pike, Zanesville, OH 43701. Gasco is a public utility engaged in furnishing natural gas service to customers in Tennessee and Kentucky and is subject to the jurisdiction of the Authority. Gasco owns and operates the natural gas distribution systems known as 1) the Jellico System located in Campbell County, Tennessee and Whitley County, Kentucky; 2) the Byrdstown System located in Pickett County, Tennessee; 3) the Fentress System located in Fentress County, Tennessee, and 4) the Albany System located in Clinton County, Kentucky (collectively all four shall be referenced as the “Gasco Utility Systems”).

II. FACTUAL AND PROCEDURAL BACKGROUND

3. On December 8, 1993, the Tennessee Public Service Commission (“TPSC”) entered an order approving the transfer of a certificate of public convenience and necessity (“CCN”) for the operation of a natural gas distribution system from Jellico Gas Utility, Inc. to Gasco Distribution Systems of Tennessee, Inc. On October 4, 1994, the TPSC approved the merger of Gasco Distribution Systems, Inc. into Gasco. The CCN permitted Gasco to operate the gas system in and around the area of Jellico, Tennessee.

4. On or about June 12, 1997, Gasco’s CCN was amended to include Pickett County, Tennessee, which is the county where the City of Byrdstown and Gasco’s Byrdstown System are

located. Also on June 12, 1997, the Authority entered an Order approving a franchise agreement between Gasco and Pickett County, which provided for Pickett County to receive a franchise fee of two percent (2%) of Gasco's net natural gas sales (not including the City of Byrdstown for which a separate franchise agreements was obtained) in exchange for an exclusive franchise to supply natural gas service in Pickett County for 40 years. An Order was later entered in 2001 approving a grant of privilege or franchise by the town of Byrdstown pursuant to T.C.A. § 65-4-107. Additionally, in an area known as Fentress Row, six (6) customers in Fentress County, Tennessee are included in Gasco's utility coverage area.⁴

5. In conjunction with the approval of the CCN's to provide utility services in Jellico, Byrdstown and Pickett County, Tennessee, Gasco entered into certain franchise agreements with the City of Jellico, the City of Byrdstown and Pickett County, respectively. True and exact copies of the franchise agreements and accompanying orders and ordinances authorizing such agreements are attached hereto as **Exhibit D**. In particular, the Byrdstown Natural Gas Franchise Ordinance of 2000 requires the Authority's approval before the agreement can be assigned to Navitas.

6. On June 1, 2009, Gasco filed for Chapter 11 bankruptcy protection – Case No. 09-056171 - in the United States Bankruptcy Court for the Southern District of Ohio, Eastern Division. Gasco has been operating as a Debtor in Possession since that time.

7. In December 2009, NALLC began the process to bid on Gasco's utility distribution system's assets in the bankruptcy proceeding.

8. By Agreement dated July 9, 2010 and amended on October 14, 2010 (collectively the "APA"), Gasco agreed to sell, and NALLC agreed to purchase the assets in Gasco's gas utility system subject to the approval of the Authority and to the Bankruptcy Court's approval.

⁴ A redacted description of the Fentress Row Explanation is attached hereto as **Exhibit C**.

The sale will result in a change in ownership of the Gasco Utility Systems. The gas system is comprised of customers and master meters, mains and regulators, pipelines, easements, rights-of-way, tools, equipment, supplies and other personal property used in the operation of the gas utility system. A copy of the redacted Agreement and Amendment thereto are attached hereto as **Exhibit E** and marked **CONFIDENTIAL**.

9. On October 21, 2010, the Bankruptcy Court entered an Order authorizing and approving NALLC's bid (as set forth in the APA) to acquire the Gasco Utility Systems in Tennessee and Kentucky, which included the Jellico System, the Byrdstown System, the Fentress System, and the Albany, Kentucky System. A true and exact copy of the Bankruptcy Court Order awarding NALLC its bid for the Gasco Utility Systems in Tennessee and Kentucky systems is affixed hereto as **Exhibit F**.

III. DISCUSSION

10. The Navitas companies have the requisite managerial and technical expertise to own and operate the Gasco Utility Systems. The Navitas companies have extensive knowledge and expertise in operating a rural regulated gas utility by virtue of its ownership of Fort Cobb Fuel Authority, LLC in Oklahoma. The Navitas companies are also familiar with federal and state, including Authority, utility regulations and currently works closely with the Oklahoma Corporation Commission and the Federal Energy Regulatory Commission ("FERC") to maintain properly functioning and legally compliant rural utility systems in Oklahoma.

11. Similar to the structure of many utilities, the Navitas companies are comprised of two sister entities, Navitas Utility Corporation ("NUC") and NALLC. A diagram of the corporate structure of the Navitas companies is attached hereto as **Exhibit G**. NALLC is a holding company created to retain certain energy assets. NUC is an operating entity primarily

engaged in providing necessary support services for the operations of NALLC. Both companies are owned by the same two shareholders – Mr. Thomas Hartline and Mr. Richard Varner (though with differing percentage interests). The vitae’s of Messrs. Varner and Hartline are attached hereto as **Exhibit H**.

12. NALLC is the parent company of Fort Cobb Fuel Authority, LLC (“FCFA”), a regulated natural gas utility in Oklahoma. FCFA is comprised of two divisions, the original Fort Cobb utility which includes certain recent acquisitions and the LeAnn Gas Company division derived from a utility acquisition in Northeast Oklahoma. In addition, FCFA has three subsidiaries, Navitas OK3, derived from an acquisition in Southwest Oklahoma, Navitas-WinStar, a joint venture project to construct a new gas system in South central Oklahoma, and Navitas 1. The assets in NALLC and its subsidiaries include regulated and unregulated pipelines, office locations, the right-to-serve in the form of approved tariffs from the Oklahoma Corporation Commission, and certain other assets. NALLC currently serves approximately 4,600 customers in rural Oklahoma.

13. NUC is the operating entity for the assets of NALLC and its subsidiaries. NUC provides the employees, the rolling stock, the computers and information systems, insurance, and other equipment & activities for operating the assets of NALLC. These operating services are provided at a contractually preset amount, billed monthly, and reviewed regularly. Since its first acquisition in 2007, NUC has been consolidated into the books of NALLC. With no utility operations outside of Oklahoma there has been no jurisdictional allocation. However, in the latest rate filing submitted September 30, 2010 with the Oklahoma Corporation Commission (Cause No. PUD 201000026), NUC used its standard allocation method to distribute its costs to the various NALLC divisions and subsidiaries in Oklahoma. As both Mr. Hartline and Mr.

Varner are members of the Chickasaw Nation, NUC is a minority business enterprise certified by the California Public Utilities Authority.

14. For operations in Tennessee and Kentucky, NALLC will replicate the structure used in Oklahoma. NALLC has formed two companies, Navitas TN NG, LLC and Navitas KY NG, LLC in Tennessee and Kentucky, respectively. As with FCFA, NUC will contract to operate these utility assets. Due to the travel time between Jellico, TN and the Byrdstown, TN/Albany, KY systems, NUC intends to retain field service personnel in each location. The initial expectation is that the two current Gasco employees servicing the systems will be retained. Currently, Gasco *rents* facilities in Jellico, Tennessee and Byrdstown, Tennessee; whereas, the Navitas companies will seek to *purchase* facilities in Jellico, Tennessee and Albany, Kentucky. Billing will be moved from Gasco's corporate offices in Ohio to NALLC's affiliate, FCFA's Eakly, Oklahoma operational headquarters. NUC is currently in the process of obtaining the records in order to set up the Tennessee customers in its system. Accounting and regulatory compliance will be handled out of NALLC's Irvine, California office. Meter proving will begin and be handled by the Eakly, Oklahoma meter shop. A review of equipment and retooling of the field offices will be undertaken immediately upon closing the acquisition. As NUC has done with its eight previous acquisitions, a company representative will be dispatched to work alongside the local employees during the transition process to assist with integration into its systems. NALLC and NUC's expectation is that this process will take several weeks involving multiple trips to each location.

15. NALLC and NUC have the requisite financial stability to operate the Gasco systems. NALLC and NUC are not publicly held companies, and therefore its 2009 Federal and

State Income Tax Returns and Independent Auditor's Report are confidential and are being provided herewith as **Exhibit I** marked '**CONFIDENTIAL.**'

16. The acquisition of the assets of Gasco is not intended to result in any changes to the local personnel in Tennessee. Gasco's employees in Tennessee possess extensive managerial and technical experience and are expected to be retained. As stated previously, all bookkeeping, billing and other functions will be provided by NALLC employees in Eakly, Oklahoma and in Irvine, California where its corporate offices are located.

17. Navitas intends to adopt the existing tariffs of Gasco on file with the Authority and will subsequently file a separate proceeding to revise the rates, terms and conditions of service of the utility.

18. The Tennessee utility portion of the Gasco Utility Systems will operate under the name of Navitas TN NG, LLC.

19. Certain current liabilities and contractual obligations to which Gasco is bound relating to the Gasco Utility Systems, such as executory contracts, and consumer deposits and credits will transfer to NALLC as set forth in the APA. All franchise agreements, licenses, permits, rights-of-way, and authorizations under which Gasco will conduct its business will transfer to NALLC.

20. The gas suppliers and transporters will not change as a result of the acquisition. However, given Gasco's status as a chapter 11 debtor in possession and questionable financial condition, there is a real concern that one or more of its suppliers may stop providing gas to Gasco's customers in the near future. Thus, it is critical that this petition be reviewed and a hearing held expeditiously to ensure a smooth transition with the gas supplier and transporter before January 1, 2011 – the peak time for gas use.

21. Once the transfer of control is approved, Navitas will be in close contact with the Authority to ensure safe, reliable gas service is not interrupted to the rural customers it seeks to serve.

22. Navitas' shareholders have read and understand all of the Authority's current gas service rules applicable to Gasco, and they will continue to abide by the rules. Navitas understands that if it does not abide by the Authority's rules it may be subject to penalties.

23. Navitas members are familiar with the Authority's Pipeline Safety Division and will work closely with the Authority's personnel to ensure that the system is maintained properly, the gas system is checked regularly for leaks and damage, and meters are checked to ensure that safe reliable gas service is provided to its customers.

24. Navitas will submit to the Authority *all* annual reports and other filings in a timely fashion.

25. Navitas states that to the best of its knowledge, it is in good standing in Oklahoma and all annual reports and monthly fuel filings and reports required by the authorities there are current. At present, Fort Cobb Fuel Authority in Oklahoma has no outstanding fines, public utility fee assessments or other deficiencies that have been identified by the Oklahoma Public Utility Division or Consumer Services Division.

26. Approving the transfer of control and authority of the Gasco properties to Navitas is in the public interest and will enhance the rural communities in which it serves. NALLC and its affiliates are committed to the rural communities in which it serves and helps to ensure that these communities stay viable. For example, when NALLC's affiliate purchased the Velma Municipal system in Velma, Oklahoma, it purchased an abandoned building on the main street of downtown which has been completely remodeled for a local office. This has spurred other

businesses to improve their buildings in the downtown area of Velma. Too, when NALLC's affiliate acquired the Rimrock system in Southwest Oklahoma, it purchased another local office which has contributed to economic development in the rural town of Hollis, Oklahoma. At NALLC's affiliate, FCFA's main headquarters in Eakly, Oklahoma, an abandoned school was purchased which is used as the main headquarters for personnel and equipment. After being totally refurbished, the former cafeteria of that school has been rented to a local resident who now runs a restaurant for local farmers and residents.

27. NALLC and its affiliate Navitas are committed to assisting and keeping rural communities viable and have shown this through their investment in rural America. While many large utilities are not interested in investing in rural areas as they are more expensive to serve due to density of customer base, NALLC understands the importance of preserving rural communities and is committed to ensuring that these communities continue to thrive. Navitas plans to purchase and open local offices for rural Tennessee customers in its proposed serving area, employing local residents and improving the quality of life of the people there. Accordingly, this request to approve the transfer of control of Gasco's assets is in the public's interest.

28. Approval of this Petition in an expeditious manner, and if possible prior to January 1, 2011 (the peak month for gas use in Tennessee), is also in the public interest due to Gasco's precarious financial condition. As discussed above, Gasco is in bankruptcy in Ohio and its ability to pay its supplier and continue providing utility services to Tennessee customers is problematic at present. Once the transfer of control is authorized, NALLC itself and through its affiliates stands ready to act to ensure that its Tennessee customers receive safe reliable natural gas service immediately. NALLC and its affiliate Navitas have the resources and the managerial

and technical expertise to ensure a smooth transition and that the expectations of its suppliers and customers are met. As the winter months fast approach, it is critical that Navitas be authorized to step in and provide natural gas service as soon as possible and that the effected communities benefit from its presence.

29. Notices and Communications Regarding the Petition should be sent to:

John Knox Walkup, Esq. (# 7776)
Klint Alexander, Esq. (#20420)
Wyatt, Tarrant & Combs, LLP
2525 West End Avenue
Suite 1500
Nashville, TN 37203
(615) 244-0020
kalexander@wyattfirm.com
kwalkup@wyattfirm.com

Ron Comingdeer, OBA#1835
Mary Kathryn Kunc, OBA#15907
Ron Comingdeer & Associates
6011 N. Robinson
Oklahoma City, Oklahoma 73118
(405) 848-5534
Facsimile: (405) 843-5688
hunter@comingdeerlaw.com
mkkunc@comingdeerlaw.com

Counsel for the Navitas Companies

Fred Steele, President
Gasco Distribution Systems, Inc.
4445 East Pike
Zanesville, Ohio 43701

WHEREFORE, Petitioner requests that the Authority enter a final order as follows:

1. Finding that, after the acquisition of the Gasco Utility Systems currently owned by Gasco Distribution Systems, Inc. by Navitas, Navitas will have the suitability, the financial responsibility, and the capability to perform efficiently the utility services to be transferred, and

that the transfer of control and authority to provide retail natural gas utility services to Navitas will benefit the consuming public and will further the public interest;

2. Approving the transfer of control and authority from Gasco Distribution Systems, Inc. to Navitas, including its authority to provide utility services deriving from its Certificate of Public Convenience and Necessity in Jellico, Campbell County, Byrdstown, Pickett County and Fentress County, Tennessee and Whitley County, Kentucky, and related orders, approvals and actions of the Authority or its predecessor, as required by T.C.A. § 65-4-113, through the acquisition of ownership and control of the Gasco Utility Systems of Gasco Distribution Systems, Inc. by Navitas;

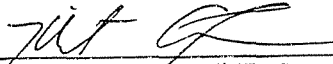
3. Approving to the extent required by statutes or agreements the assignment of certain franchise agreements to Navitas, including the agreements between Gasco and the City of Byrdstown, Gasco and Pickett County and Gasco and the City of Jellico, to provide utility services in Jellico, Byrdstown, Pickett County, and Fentress, Tennessee pursuant T.C.A. 65-4-107, 65-4-112 and the Byrdstown Natural Gas Franchise Ordinance of 2000;

4. Approving the transfer of control and authority to provide utility services in Jellico, Campbell County, Byrdstown, Pickett County, and Fentress County, Tennessee and Whitley County, Kentucky prior to January 1, 2011 in order for the service to customers to continue throughout the winter months; and

5. Granting all other necessary or appropriate authorizations and further relief.

Dated this the 17th day of November, 2010.

Respectfully Submitted,



John Knox Walkup (#7776)
Klint W. Alexander (#20420)
Wyatt, Tarrant & Combs, LLP
2525 West End Avenue, Suite 1500
Nashville, TN 37203
(615) 244-0020
kalexander@wyattfirm.com
kwalkup@wyattfirm.com

- and -

Ron Comingdeer, OBA#1835
Mary Kathryn Kunc, OBA#15907
Ron Comingdeer & Associates
6011 N. Robinson
Oklahoma City, Oklahoma 73118
(405) 848-5534
hunter@comingdeerlaw.com
mkkunc@comingdeerlaw.com

Counsel for Navitas Assets, L.L.C.

- and -



Fred Steele, President
Gasco Distribution Systems, Inc.
4445 East Pike
Zanesville, Ohio 43701

Gasco Distribution Systems, Inc.

LIST OF EXHIBITS

- Exhibit A NALLC's Corporate Resolution assigning all rights under the Asset Purchase Agreement to Navitas
- Exhibit B Kentucky Public Service Commission Order dated August 13, 1990
- Exhibit C Redacted Description of the Fentress Row Explanation in Fentress County, Tennessee
- Exhibit D Franchise Agreements, Orders and Ordinances authorizing Franchise Agreements between Gasco and the City of Jellico, Tennessee, Gasco and the City of Byrdstown, Tennessee and Gasco and Pickett County, Tennessee
- Exhibit E Redacted Asset Purchase Agreement and Amendment
(**CONFIDENTIAL** – Filed under seal)
- Exhibit F UNITED STATES BANKRUPTCY COURT ORDER (A) APPROVING THE SALE OF SUBSTANTIALLY ALL OF DEBTOR'S UTILITY DISTRIBUTION SYSTEMS ASSETS TO SUCCESSFUL BIDDER AT AUCTION; (B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS; AND (C) GRANTING OTHER RELATED RELIEF, entered October 21, 2010 in Chapter 11 Case No. 09-056171
- Exhibit G Navitas Companies Corporate Structure Chart
- Exhibit H Management Biographies
- Exhibit I 2009 Federal and State Income Tax Returns and Independent Auditor's Report (**CONFIDENTIAL** – Filed under seal)

VERIFICATION OF GASCO DISTRIBUTION SYSTEMS, INC.

STATE OF OHIO)

) ss.

COUNTY OF Muskingum)

I, Fred Steele, President of Gasco Distribution Systems, Inc. being first duly sworn according to law, makes oath and affirm that I have read the foregoing Joint Petition, know the contents thereof, and that with respect to the representations on behalf of Gasco Distribution Systems, Inc., represents that the same is true and correct to the best of my knowledge, information and belief.

Fred A Steele
FRED STEELE

Subscribed and sworn to before me, a Notary Public in and for the above County and State, on this 16th day of November, 2010.

Twila D Wright
Notary Public

My Commission Expires:

TWILA D. WRIGHT
Notary Public, State of Ohio
My Commission Expires May 15, 2015

JURAT

State of : California

County of: Orange

Subscribed and sworn to (or ~~affirmed~~) before me

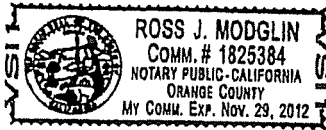
this 16th day of November, 2010, by
Date Month Year

(1) Thomas Eben Hartline
Name of Signer (s)

(2) Richard Alan Varner
Name of Signer (s)

who proved to me on the basis of satisfactory evidence to be the person (s) who appeared before me.

WITNESS my hand and official seal



Place Notary Seal Above

Ross J. Modglin
Signature of Notary Public

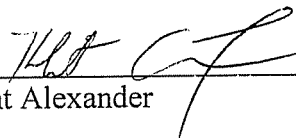
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 17th day of November, 2010, a true and correct copy of the foregoing instrument was deposited in the United States Mail, with postage prepaid, and addressed to the following:

Richard Collier, Esq. ✓
General Counsel
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

Vance L. Broemel, Esq. ✓
Senior Counsel
Consumer Advocate and Protection Division
State of Tennessee, Office of Attorney General
John Sevier Building
PO Box 20207
500 Charlotte Avenue
Nashville, Tennessee 37202

Helen Helton, Esq. ✓
Anita Mitchell, Esq.
Division of General Counsel
Public Service Commission
Commonwealth of Kentucky
211 Sower Blvd.
PO Box 615
Frankfort, Kentucky 40601


Klint Alexander

45408796.1

SPECIAL MEETING OF THE MEMBERS

A special meeting of the Members of Navitas Assets, L.L.C. ("NALLC") was held on November 16, 2010 at 18218 East McDermott, Irvine, California at 9 o'clock 1. 5., pursuant to the waiver of notice duly executed by the Members.

The meeting was called to order by Richard Varner, Chief Executive Officer (CEO), who presided, and Thomas Hartline, secretary, acted as secretary of the meeting.

Upon calling the roll the secretary reported that the following officers were present:

Richard Varner
Thomas Hartline

said persons being all of the directors.

The CEO declared a quorum of the officers to be present.


The chairman directed the secretary to annex to the minutes of this meeting the waiver of notice thereof.

The chairman presented the Asset Purchase Agreement dated July 9, 2010 and Amendment thereto dated October 14, 2010, wherein Gasco Distribution Systems, Inc. agreed to sell, and NALLC agreed to purchase the assets in Gasco's gas utility system subject to the approval of the Tennessee and Kentucky Utility Commissions. The chairman then presented, and the secretary then read to the meeting the following resolution. The proposed resolution was then fully discussed and, on motion duly made and seconded, the following resolution was unanimously adopted:

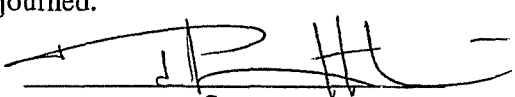
1. RESOLVED that NALLC, pursuant to the terms of the Asset Purchase Agreement as amended, assign all of its rights and privileges under the Agreement to Navitas TN NG, LLC and Navitas KY NG, LLC for their respective service areas in each state in order to provide natural gas service to customers.

There being no further business to come before this meeting, upon motion duly made, seconded and unanimously carried, the meeting adjourned.

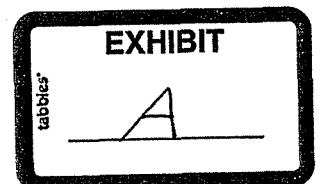
Approved:



CEO



Secretary





COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

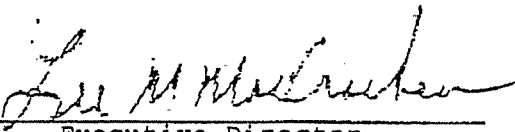
CERTIFICATE OF SERVICE

Re: Case No. 90-208
Ken Gas of Tennessee, Inc.
d/b/a Jellico Gas Utility, Inc.

I, Lee M. MacCracken, Executive Director of the Public Service Commission, do hereby certify that the enclosed attested copy of the Commission's Order in the above case was served upon the following by U. S. Mail on the 13th day of August, 1990.

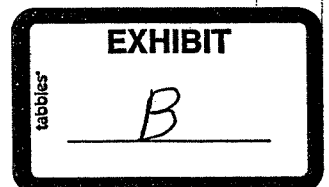
Parties of Record:

Mr. Walton R. Haddix
Mr. Robert C. Hazelrigg
Mr. Keith Bissell


Executive Director

LMM/cbg

Enclosure



COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

GAS SERVICE TO KENTUCKY CUSTOMERS)
BY KEN-GAS OF TENNESSEE, INC. d/b/a) CASE NO. 90-208
JELlico GAS UTILITY, INC.)

O R D E R

On February 6, 1989, Staff of the Kentucky Public Service Commission ("Commission") received a copy of CP88-387-000, an Order Determining Service Area issued by the Federal Energy Regulatory Commission ("FERC") on October 27, 1988. This Order is attached and marked Exhibit A. According to the FERC Order, Ken-Gas of Tennessee, Inc. ("Ken-Gas") proposes to build facilities which extend across the Kentucky/Tennessee border to supply gas to a local distribution system which it will construct in Jellico, Tennessee. Gas will be distributed by Ken-Gas directly to end-users, and there will be no sale for resale. Most of Ken-Gas's customers will reside in Tennessee; however, some of the prospective customers may be located in Whitley County, Kentucky.

Based upon the information available to the FERC, including the fact that Ken-Gas's local distribution operations in Kentucky and Tennessee are regulated by this Commission and the Tennessee Public Service Commission ("Tennessee PSC"), the FERC granted Ken-Gas a service area determination under section 7(f) of the Natural Gas Act. This determination pertains to service to the

city of Jellico, Tennessee, and its environs, Campbell County, Tennessee, and Whitley County, Kentucky. A section 7(f) determination means that the portion of Ken-Gas's operations that extend between the Kentucky/Tennessee border, which would ordinarily constitute interstate commerce, are jurisdictional to the appropriate state public service commission.

Since the FERC Order in CP88-387-000 referenced potential service to Whitley County, Kentucky, Commission Staff requested additional information from Ken-Gas and the Tennessee PSC to determine the status of the proposed project, the extent of proposed service to Kentucky residents, and to clarify certain jurisdictional issues with the Tennessee PSC. This information is attached and marked Exhibit B. In Docket No. U-87-7538, at the Tennessee PSC, Ken-Gas was granted a Certificate of Convenience and Necessity to construct and operate a natural gas distribution system to offer service within the corporate limits of Jellico, Tennessee, and the Oswego Industrial Park. In Docket No. U-87-7538, the Tennessee PSC also approved financing, revenue requirements, and rates for Ken-Gas. The design and construction of the Ken-Gas system, hereinafter referred to as Jellico Gas Utility, Inc. ("Jellico"), was required to comply with the Tennessee PSC's pipeline safety regulations, which include 49 CFR Part 192 (Federal Pipeline Safety Regulations).

Based upon information provided by Jellico, its gas is purchased from Delta Natural Gas, Inc. ("Delta"), a local distribution company with pipeline facilities and customers in central and south central Kentucky and jurisdictional to this Commission.

Jellico's gas supply is delivered through an eight-inch steel transmission line, originating in Kentucky approximately 1,000 feet from the Tennessee border and terminating at a point one mile north of Jellico, Tennessee, where the distribution system begins. This transmission pipeline is owned and operated by Jellico.

On February 1, 1990, Commission Staff met with Jellico officials and Glynn Blanton, manager of the Tennessee PSC's Gas Pipeline Safety Branch. Staff drove throughout the extent of the Jellico system, including two areas in Whitley County, Kentucky, where residents have requested gas service, the communities of Kentucky Hill and Black Oak. At the time of this visit, most of the distribution piping had been installed, and approximately 30 customers were receiving gas service. No pipe had been installed in either of the two Kentucky communities.

Mr. Blanton stated that his Staff had reviewed the construction specifications submitted by Ken-Gas in U-87-7538 and conducted periodic site inspections during the installation of the Jellico system. Based upon its review and inspections, the Tennessee PSC's Gas Pipeline Safety Branch has concluded that the design and installation of the Jellico system complies with the Tennessee PSC's gas safety regulations, including 49 CFR Part 192.

Prior to Commission Staff's February 1, 1990 site visit, Jellico had submitted information stating that whether or not Jellico offers service to the Kentucky communities of Kentucky Hill and Black Oak depends upon the regulatory treatment of such service by the Commission. See attachment marked Exhibit C. Gas service to residents in these two communities may be possible if

Jellico could remain under the jurisdiction of one regulatory commission. Jellico stated that if both the Kentucky and Tennessee Commissions imposed jurisdiction, the Kentucky residents would probably not be served. In Jellico's opinion, the costs of maintaining dual systems of accounts, filing dual annual reports, and rate cases would probably be greater than any potential benefits.

Jellico reiterated its position on February 14, 1990, concluding that it would not be economically feasible to serve the Kentucky residents if records were required by this Commission. However, Jellico is willing to offer service to the Kentucky Hill and Black Oak communities under the same terms and rates as approved by the Tennessee PSC for residents of Jellico, Tennessee. In this response, Jellico also provided two lists of prospective customers, 29 in Kentucky Hill and 28 in Black Oak. Jellico does not anticipate offering such service until sometime in 1991.

Following receipt of Jellico's initial statements regarding dual jurisdiction over Jellico's operations, Commission Staff contacted Delta regarding service to the two Kentucky communities. Delta currently serves Williamsburg which is located in central Whitley County. In its December 7, 1989 response, Delta stated it would not be feasible for Delta to directly serve the prospective customers in the Kentucky Hill and Black Oak communities. See attachment marked Exhibit D. However, Delta has no objection to Jellico serving these residents provided Jellico does not attempt to duplicate service provided by Delta.

The Commission's principal concern in this matter is that the Kentucky residents in the communities of Kentucky Hill and Black Oak have the opportunity to receive, if they desire, natural gas service; and that such service, if provided, is reliable, safe, and reasonably priced. In an effort to allow such an opportunity to occur, yet recognizing the only source from which such service can materialize, the Commission requested that the Tennessee PSC investigate the feasibility of extending its jurisdiction of Jellico to include any service Jellico provides to Kentucky Hill and Black Oak. The request was made based upon the combination of facts known: that the only source of gas service to these two communities is Jellico; the relatively small number of potential customers (approximately 57), and their proximity to Jellico, Tennessee; and that almost all of the Jellico system is physically located in Tennessee. Such jurisdiction would include rates, service, and safety. In its May 9, 1990 response, attached and marked Exhibit E, the Tennessee PSC advised that it had similar arrangements with other states contiguous to Tennessee and concluded that the Commission's proposal was feasible.

After review of the available information, pertinent statutes and regulations, and being otherwise sufficiently advised, the Commission finds that:

1. Jellico is a gas distribution utility subject to the jurisdiction of the Tennessee PSC. The Jellico system includes a transmission pipeline which begins in Whitley County, Kentucky, and terminates in Tennessee approximately one mile north of the city limits of Jellico, Tennessee.

2. The FERC has granted Ken-Gas a service area determination under section 7(f) of the Natural Gas Act to include the city of Jellico, Tennessee, and its environs, Campbell County, Tennessee, and Whitley County, Kentucky. The service area determination by the FERC means that delivery of gas by Jellico to its ultimate consumers, even if across state lines, is subject to the exclusive jurisdiction of the state commission in the state in which the gas is consumed.

3. In Docket No. U-87-7538, Ken-Gas was granted a Certificate of Convenience and Necessity to construct and operate a natural gas distribution system to offer service within the corporate limits of Jellico, Tennessee, and the Oswego Industrial Park.

4. Based upon its review in U-87-7538 of Jellico's construction specifications and subsequent periodic site inspections during the installation of the Jellico system, the Tennessee PSC's Gas Pipeline Safety Branch has determined that the design and installation of the Jellico gas system complies with the Tennessee PSC's gas pipeline safety regulations, which include 49 CFR Part 192 (Federal Pipeline Safety Regulations).

5. 807 KAR 5:022, this Commission's pipeline safety regulations, contains the same requirements found in 49 CFR Part 192.

6. Kentucky residents in two Whitley County communities, Kentucky Hill and Black Oak, both of which are immediately adjacent to the city limits of Jellico, Tennessee, have requested gas service from Jellico.

7. Jellico has concluded that gas service to the Kentucky residents referred to herein may be possible only if Jellico

remains under the jurisdiction of one regulatory commission. If Jellico offers such service, it cannot be provided until 1991.

8. Delta is the only Kentucky gas distribution utility jurisdictional to this Commission with facilities in Whitley County. However, Delta has stated it is not feasible for Delta to directly serve the prospective customers in Kentucky Hill and Black Oak.

9. With the relatively small number of Kentucky residents requesting gas service and their proximity to Jellico, Tennessee, and since virtually all of the Jellico gas system is physically located in Tennessee and represents the only source of natural gas to these residents, the existing jurisdiction of the Tennessee PSC over Jellico's operations should include any service provided to the Kentucky communities of Kentucky Hill and Black Oak.

IT IS THEREFORE ORDERED that:

1. Approval by the Tennessee PSC of Ken-Gas's construction and operation, financing, revenue requirements, and rates for the Jellico gas system shall be deemed compliance with this Commission's laws, rules, and regulations. Ken-Gas shall simultaneously file with this Commission every application it files with the Tennessee PSC. Ken-Gas shall file with this Commission every final order that the Tennessee PSC enters relating to its operations and rates within 10 days of the date of the Tennessee PSC final order.

2. Compliance with Tennessee PSC laws, rules, and regulations applicable to service and safety shall be deemed as


compliance with this Commission's laws, rules, and regulations applicable to service and safety.

3. Prior to providing service to Kentucky residents, Jellico shall comply with KRS 278.160 by filing a copy of its tariff, which sets out the rates and services to be offered, as approved by the Tennessee PSC for adoption and ratification by this Commission. Any subsequent changes to its tariff shall be filed with this Commission for adoption and ratification within 10 days of the date of approval by the Tennessee PSC.

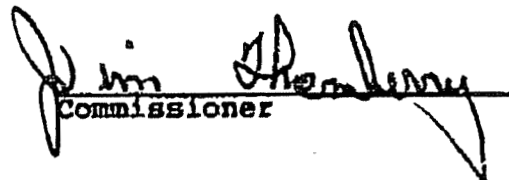
4. Ordering paragraphs 1-3 herein apply only to Jellico's proposed service to Kentucky residents in Kentucky Hill and Black Oak.

Done at Frankfort, Kentucky, this 13th day of August, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

SCANNED IMAGE #9008021

April 24, 1995:

Per Frankie Bertrand/Rebecca Goodman - not included on image file for case #90-208 were 5 items:

1. EXHIBIT A - FERC order #CP88-387-000
2. EXHIBIT B - CERTIFICATE OF CONVENIENCE & NECESSITY #U-87-7538 (before Tennessee PSC)
3. EXHIBIT C - letter addressed to Ralph Dennis dated 15Jan90
4. EXHIBIT D - letter addressed to Ralph Dennis dated 07Dec89
5. EXHIBIT E - letter addressed to Lee M. McCracken dated 09May90

Discussion

In previous cases, we have made a section 7(f) service area determination where the natural-gas company was primarily engaged in the local distribution of natural gas, but was subject to the Commission's jurisdiction because its facilities crossed state lines. We have considered four factors in determining whether a section 7(f) service area is appropriate: (1) whether the company makes sales for resale; (2) whether its rates are regulated by state or local agencies; (3) whether the company has an extensive transmission system; and (4) the concerns of other companies providing gas in the same area. 1/

After consideration of these criteria, we find it is appropriate to determine a service area for Ken-Gas' proposed distribution system. First, although the proposed facilities will extend across state lines in interstate commerce, the system will be operated essentially as a local distribution company. The gas will be distributed by Ken-Gas directly to end-users, and there will be no sale for resale. Further, Ken-Gas' operations are regulated by the Kentucky and Tennessee Public Service Commissions. Finally, the proposed transmission system includes approximately 19 miles of 2-inch to 4-inch pipeline, which is not extensive, and is the only system providing natural gas service in the area. Our determination of a service area will enable Ken-Gas to enlarge or expand its facilities to better serve its customers in the area without seeking further Commission approval.

Accordingly, we grant Ken-Gas a service area determination under section 7(f) of the Natural Gas Act to include the City of Jellico, Tennessee and its environs, Campbell County, Tennessee and Whitley County, Kentucky.

The Commission staff prepared an environmental assessment (EA) for the proposal by Ken-Gas. The staff found that the facilities would be constructed within existing road and utility rights-of-way, and Ken-Gas has received the necessary authorizations for the use of those right-of-ways. All disturbed areas would be reseeded after construction. There would be no

1/ See, e.g., Washington Gas Light Co., 28 F.P.C. 753 (1962); Blacksville Oil and Gas Co., 37 F.P.C. 502 (1967); National Fuel Gas Distribution Corp., 13 FERC ¶ 61,200 (1980); Great River Gas Co., 14 FERC ¶ 61,167 (1981); Shenendoah Gas Co., 16 FERC ¶ 61,087 (1981); Arkansas Oklahoma Gas Corp., 33 FERC ¶ 61,197 (1985); High Plains Natural Gas Company and Wheeler Gas, Inc., 41 FERC ¶ 61,364 (1987); and Associated Natural Gas Company, a Division of Arkansas Western Gas Company, et al., 43 FERC ¶ 61,304 (1988).

effect on cultural resources, or threatened or endangered species. Based on the finding in the EA, approval of this application does not constitute a major Federal action significantly affecting the quality of the human environment.

At a hearing held on October 26, 1988, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission orders:

Ken-Gas is hereby granted the service area determination it has requested pursuant to section 7(f) of the Natural Gas Act. Ken-Gas' service area is determined to include the City of Jellico, Tennessee and its environs, Campbell County, Tennessee, and Whitley County, Kentucky, as more fully described in the application.

By the Commission. Commissioner Langdon voted present.

(S E A L)

Lois D. Cashell

Lois D. Cashell,
Secretary.

RECEIVED

10-13-88

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
October 13, 1988 Nashville, Tennessee

RECEIVED
PUBLIC UTILITY
COMMISSION & SERVICE

IN RE: APPLICATION OF KEN-GAS OF TENNESSEE, INC. FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE CONSTRUCTION OF A NATURAL GAS DISTRIBUTION SYSTEM, APPROVAL OF FINANCING AND CONSTRUCTION COSTS AND APPROVAL OF APPLICABLE RATES.

DOCKET NO. U-87-7538

ORDER

This matter is before the Tennessee Public Service Commission upon the application of Ken-Gas of Tennessee, Inc. for a Certificate of Convenience and Necessity as set forth in the above caption.

The matter was set for hearing and was heard on March 15, 1988 before Ralph B. Christian, II, the Administrative Judge. On September 16, 1988 the Administrative Judge issued his Initial Order recommending that the application be granted.

The Commission considered this matter at the Commission Conference held on October 4, 1988. It was concluded after careful consideration of the entire record, including the Administrative Judge's Initial Order and all applicable laws and statutes that the Administrative Judge's Initial Order should be approved and the authority granted. The Commission further ratifies and adopts the findings and conclusions of the Administrative Judge as its own.

IT IS THEREFORE ORDERED:

1. That the Administrative Judge's Initial Order dated September 16, 1988, in this docket is hereby ratified, adopted and incorporated by reference in this Order as fully as though copied verbatim herein, including the findings and conclusions of the Administrative Judge which the Commission adopts as its own.

2. That a Certificate of Convenience and Necessity to construct and operate a natural gas distribution system is hereby granted.

3. That within sixty (60) days of the substantial completion of construction, Ken-Gas of Tennessee, Inc. is directed to file its final costs in accordance with the Uniform System of Accounts with the Tennessee Public Service Commission.

4. That within thirty (30) days of substantial completion of construction, Ken-Gas of Tennessee, Inc. is directed to file a copy of the "As-Built" drawings and a signed statement that the construction has been satisfactorily completed in accordance with the contract plans and specifications with the Tennessee Public Service Commission.

5. That the proposed financing plan, its amounts, interests rates, and amortization periods as set forth herein, is hereby approved.

6. That the costs, as determined by the Tennessee Public Service Commission Staff and set forth in Schedules 1 through 9, are hereby approved.

7. That the rates as set forth herein are hereby approved.

8. That Ken-Gas of Tennessee, Inc. is hereby directed to file a tariff with the Tennessee Public Service Commission setting forth the rates approved herein before commencing operations.

9. That Ken-Gas of Tennessee, Inc. is hereby directed to file a copy of its General Rules and Regulations as prescribed by T.P.S.C. Rule 1220-4-1-.01 through .07.


10. That Ken-Gas of Tennessee, Inc. is hereby directed to maintain its accounting records in accordance with the methods

prescribed by the Uniform System of Accounting for Class C & D Utilities.


11. That Ken-Gas of Tennessee, Inc. is hereby directed to file a quarterly report, in the form of Quarterly Report Form PSC-3.04, within sixty (60) days of the end of the quarter covered by the report.

12. That any party aggrieved with the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within ten (10) days from and after the date of this Order.

13. That any party aggrieved with the Commission's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.



 COMMISSIONER



 COMMISSIONER

ATTEST:


 EXECUTIVE DIRECTOR

1. 311

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
Nashville, Tennessee
September 16, 1988

IN RE: THE APPLICATION OF KEN-GAS OF TENNESSEE, INC.,
FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY
FOR THE CONSTRUCTION OF A NATURAL GAS
DISTRIBUTION SYSTEM, APPROVAL OF FINANCING AND
CONSTRUCTION COSTS AND APPROVAL OF APPLICABLE
RATES.

DOCKET NO.: U-87-7538

ORDER

This matter is before the Tennessee Public Service Commission upon its own motion.

Having reviewed the Initial Order in the above-captioned matter September 16, 1988, the Commission, pursuant to T.C.A. Section 4-5-315(b), hereby notifies all parties that the Commission will review all issues raised in the record of this proceeding before the Administrative Judge.

Any party may note his exceptions to the Initial Order by filing a brief with the Commission within 5 days of the date of this Order. Reply briefs may be filed within 0 days after filing exceptions. Any party may request oral argument on the issues raised in the briefs.

Requests for extensions of time within which to file briefs must be made in writing to the Executive Director of this Commission and accompanied by a proposed order to be signed by the Chairman of this Commission. The request must

Indicate that copies of the request and proposed order have been served on all parties.

The Commission decision to review the Initial Order does not affect any party's right to petition the Administrative Judge to reconsider the Initial Order pursuant to T.C.A. Section 4-6-317. Should such a petition be filed, the time limits set forth in this Order for the submission for exceptions and replies be suspended and will begin to run ab initio from the date of final disposition of the petition to reconsider.


CHAIRMAN FRANK COCHRAN


COMMISSIONER KEITH BISSELL


COMMISSIONER STEVE HEWLETT

ATTEST TO:


PAUL ALLEN, EXECUTIVE DIRECTOR

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BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
Nashville, Tennessee
September 16, 1988

IN RE: THE APPLICATION OF KEN-GAS OF TENNESSEE, INC. FOR A
CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE
CONSTRUCTION OF A NATURAL GAS DISTRIBUTION SYSTEM,
APPROVAL OF FINANCING AND CONSTRUCTION COSTS AND
APPROVAL OF APPLICABLE RATES.

DOCKET NO. U-87-7538

INITIAL ORDER

This matter is before the Tennessee Public Service Commission upon the application of Ken-Gas Of Tennessee, Inc. (Ken-Gas) for a Certificate of Convenience and Necessity as set forth in the above caption.

The matter was heard March 15, 1988, in Nashville, Tennessee, before Ralph B. Christian, II, Administrative Judge, at which time the following appearances were entered:

APPEARANCES:

DAVID CROSS, Attorney at Law, P.O. Box 370, Albany, Kentucky 42602, appearing on behalf of the Applicant Ken-Gas of Tennessee, Inc.

D. BILLYE SANDERS, Assistant General Counsel, Tennessee Public Service Commission, 460 James Robertson Parkway, Nashville, Tennessee 37219-5477, appearing on behalf of the Commission Staff.

The matter is unopposed.

APPLICANT

Ken-Gas of Tennessee, Inc. by letter dated October 16, 1987, filed an application requesting that the Tennessee Public Service Commission issue a Certificate of Convenience and Necessity for the construction of a natural gas distribution system. The

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proposed construction cost will be funded by equity investment and a commercial bank loan. Installation of the gas system will provide natural gas service to approximately 250 residential, 44 commercial, and 3 industrial customers following the first year of operation. The proposed natural gas distribution system has been designed to offer service within the corporate limits of Jellico, Tennessee and to the Oswego Industrial Park located approximately one mile from Jellico's city limits. Ken-Gas was awarded a franchise from the City of Jellico on the third reading of an Ordinance approved October 15, 1987. Said Ordinance is known as the Jellico Natural Gas Franchise Ordinance and is designated as Ordinance No. 4-87.

REVENUE REQUIREMENTS

Upon the filing of the instant application, the Public Service Commission Staff commenced its investigation of the application and requested additional information from the Company. Additionally, operating gas companies of similar size and type were analyzed to verify the accuracy and reasonableness of projections for the Jellico natural gas distribution system. The investigation produced nine schedules. After evaluation of the schedules, Ken-Gas accepted the Staff's projections. Following is a summary of the Tennessee Public Service Commission's findings.

Schedules 1 through 9 demonstrate the revenue requirements upon which the initial rate structure is based. The schedules were prepared by Commission Financial Analyst Magnal Thompson.

Purchased Gas

Natural gas for the Jellico natural gas distribution system will be supplied by Delta Natural Gas Company, Inc., of Winchester, Kentucky. Natural gas will be delivered through an

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eight inch steel transmission line, located approximately one mile north of the Jellico city limits. The line will be tapped in Kentucky approximately 1000 feet from the Tennessee border.

Applicant provided the Public Service Commission with a copy of its Gas Service Agreement with Delta Natural Gas Company, Inc., dated July 22, 1988. The cost of gas to the Jellico natural gas system will be under the Seller's Tariff regulated by the Kentucky Public Service Commission. The initial rate determination by the Tennessee Public Service Commission Staff is based on a projected wholesale cost of purchased gas of \$3.50 per Mcf as shown on Schedule 3. Applicant, however, will be allowed to operate under Appendix A to TPSC Rule 1220-4-1-.12, *Standardized Requirements for a Purchased Gas Adjustment Provision*. A natural gas pipeline's tariff usually consists of two elements: demand charges and commodity charges. Herein, however, Jellico's gas supplier, Delta Gas, has included only commodity charges in its rate structure. Therefore, the PGA will be dependent only upon changes in the commodity rate as follows:

$$PGA = \text{Current Commodity Charge} \text{ minus Base Commodity Charge}$$

The Current Commodity Charge will be the Delta Gas approved tariff rate with the Base Commodity Charge being the . \$3.50 used by the Staff to compute Jellico's cost of gas in this proceeding. Moreover, since Jellico has only firm rates, this factor will be used to adjust all of its rates.

Franchise Fee

A franchise fee of one percent of all gross receipts from the sale of natural gas will be paid to the City of Jellico. The fee will be listed separately on utility bills and will not be considered as an expense for rate-making purposes. Ken-Gas will

act as a conduit for the tax that is collected from the gas customers and in turn is paid to the city.

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Depreciation/Amortization Expenses

Schedule 9 discloses that the Commission Staff has allowed \$1,000,000 for Plant-in-Service and \$24,239 for depreciation expense. The depreciation rates used on Schedule 9 are to be used by the utility to compute depreciation unless changed by the Public Service Commission.

Operating Expenses

Operating Expenses of \$347,640 as shown on Schedule 1 and on related Schedules 3, 4, 5, and 6, were accepted by Ken-Gas of Tennessee, Inc. Said amount has been used by the Commission in determining Jellico's rates.

Revenue Requirement Determination

Based upon operating expenses of \$347,640, Ken-Gas' revenue requirement for the first year of operation is \$424,425 and is shown on Schedule 2. The projected gross revenue amount is based upon Staff requested documents obtained from the Applicant. The documents included feasibility studies and analysis by United Cities Gas Company and by Barge, Waggoner, Sumner & Cannon, an independent engineering and planning firm in Nashville, Tennessee. On site evaluations were made by Ken-Gas to verify and augment the above studies.

Ken-Gas of Tennessee, Inc.'s revenue requirement is summarized below:

Revenue	\$424,425
Total Operating Expense	<u>347,640</u>
Net Operating Income	<u>\$ 76,785</u>

The rate of return is 7.68% on a rate base of \$1,000,346.

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FINANCING

The Applicant avers that long term financing will be provided by equity investment and by a commercial bank loan. Fentress County Bank of Jamestown, Tennessee will provide the loan. The loan interest rate will be 2.5% above the low New York prime rate as published in the Wall Street Journal. The term of the loan will be 20 or 25 years.

NET INVESTMENT RATE BASE/CAPITAL STRUCTURE

Rate Base

Based upon the cost of the Natural Gas Distribution System as determined herein and upon an allowance of 1/12 of the operating and maintenance expense, exclusive of Purchased Gas, Applicant's investment rate base has been determined as follows:

Plant-in-Service	\$1,000,000
Working Capital	<u>24,585</u>
Total	\$1,024,585
Less Accumulated Depreciation	<u>24,239</u>
Rate Base	<u>\$1,000,346</u>

The revenues allowed herein will produce a rate return of 7.68%

Capital Structure

Ken-Gas of Tennessee, Inc.'s proposed Capital Structure follows:

Debt (87%)	\$1,000,000
Equity (13%)	<u>145,570</u>
Total Capital	<u>\$1,145,570</u>

RATE DESIGN

The rates for Ken-Gas customers have been determined using a projected sales volume of 22,750 Mcf for residential users, 19,800 Mcf for commercial users, and 16,200 Mcf for industrial

users. Revenue projected from a combined sales volume of 58,750 Mcf at the rates set forth below is \$424,425.

	Customer Rates	
Residential		\$7.50 per Mcf
Commercial		\$7.50 per Mcf
Industrial		\$6.50 per Mcf

ENGINEERING CONSIDERATIONS

United Cities Gas Company's proposed piping configuration was submitted to the Public Service Commission by Ken-Gas along with its original application for a Certificate of Convenience and Necessity. The actual design and construction of the gas distribution system must comply with Public Service Commission Pipeline Safety Regulations as defined in TPSC Rule 1220-4-1-.09. The system will use SDR 11 plastic pipe for gas mains and service lines. Accordingly, requirements and joining procedures for making such plastic pipe joints and for performing inspection of those joints are to be reviewed and followed. Applicant should be directed to submit construction specifications and plans for installing the gas system to the Tennessee Public Service Commission for approval, prior to the start of construction.

WHEREFORE, having considered the testimony, the evidence of record, and the statutory criteria, the Administrative Judge finds that the application is in the public interest and should be granted.

T.C.A. Section 4-5-315 provides that all parties shall have an opportunity to appeal initial orders to the Commission. The Tennessee Public Service Commission, however, reviews all initial orders, thereby assuring review. All parties may file exceptions or replies to exceptions in the form of a brief setting forth specific issues. The exceptions and any replies thereto will be

considered by the Commission in its review. The Commission will determine the matter in a regularly scheduled Commission conference. Affected parties may then seek reconsideration of the Commission's final order or may appeal the final order to the Court of Appeals, Middle Division, within 60 days of the final order.

This Initial Order is prepared in conformity with the Tennessee Uniform Administrative Procedures Act, and T.C.A. Section 4-5-101, et seq. Procedures whereby parties seek review, stay, or reconsideration are found in T.C.A. Sections 4-5-315 through 318. Judicial review of Commission orders is described in T.C.A. Section 4-5-322.

IT IS THEREFORE ORDERED:

1. That the application of Ken-Gas Of Tennessee, Inc. be granted for a Certificate of Convenience and Necessity for the construction of a natural gas distribution system.

2. That within 60 days of the substantial completion of construction, Ken-Gas of Tennessee, Inc. is directed to file its final costs in accordance with the Uniform System of Accounts with the Tennessee Public Service Commission.

3. That within 30 days of the substantial completion of construction, Ken-Gas of Tennessee, Inc. is directed to file a copy of the "As-Built" drawings and a signed statement that the construction has been satisfactorily completed in accordance with the contract plans and specifications with the Tennessee Public Service Commission.

4. That the proposed financing plan, its amounts, interest rates, and amortization periods as set forth herein, is hereby approved.

5. That the costs, as determined by the Tennessee Public Service Commission Staff and set forth in Schedules 1 through 9, are hereby approved.


6. That the rates as set forth herein are hereby approved.

7. That Ken-Gas of Tennessee, Inc. is hereby directed to file a tariff with the Tennessee Public Service Commission setting forth the rates approved herein.

8. That Ken-Gas of Tennessee, Inc. is hereby directed to file a copy of its General Rules and Regulations as prescribed by TPSC Rule 1220-4-1-.01 through .07.

9. That Ken-Gas of Tennessee, Inc. is hereby directed to maintain its accounting records in accordance with the methods prescribed by the Uniform System of Accounting for Class C & D Utilities.

10. That Ken-Gas of Tennessee, Inc. is hereby directed to file a quarterly report, in the form of Quarterly Report Form PSC-3.04, within 60 days of the end of the quarter covered by the report.


RALPH B. CHRISTIAN, II
ADMINISTRATIVE JUDGE

Before the
PUBLIC SERVICE COMMISSION
of the
STATE OF TENNESSEE

RECEIVED

JUL 24 1989

DIVISION OF UTILITY
ENGINEERING & SERVICES

in re:

KEN GAS OF JELICO
(Docket No. U-87-7538)

RECEIVED
PUBLIC SERVICE COMMISSION
EXECUTIVE DIRECTOR
MAR 2 1988

Testimony

of

Magnal Thompson

March 15, 1988

1 Q. State your name for the record please.
2 A. My name is Magnal Thompson.
3 Q. What is your position with the Tennessee Public Service
4 Commission?
5 A. I am employed as a Financial Analyst with the
6 Commission.
7 Q. How long have you been employed with the Commission?
8 A. Two years.
9 Q. Would you briefly describe your duties as a Financial
10 Analyst?
11 A. During my two year employment I have participated in
12 several rate case audits of utilities subject to the
13 Commission's jurisdiction, as well as the preparation
14 of exhibits for Commission hearings. I have also been
15 involved with the audit and analysis of the various
16 financial reports filed with the Commission.
17 Q. What is your educational background and what degrees
18 have you earned?
19 A. I have earned a Bachelor of Business Administration
20 degree with a major in Accounting and a Masters of
21 Business Administration degree from Tennessee State
22 University in May 1984 and May 1986, respectively.
23 Q. What is the purpose of your testimony in this case?
24 A. The purpose of my testimony is to present information
25 and supporting exhibits to the Commission to assist
26 them in deciding on the petition for a CCN by Ken Gas
27 of Tennessee to build a natural gas system in Jellico,

1 Tennessee and begin operations within Jellico,
2 Tennessee.

3 Q. Are there any controversial issues in this case?

4 A. No. The Company has decided to adopt my exhibits as
5 their own.

6 Q. What test period did you use in considering the
7 Company's request?

8 A. Please allow me to give a brief explanation of a test
9 period for better understanding. A test period is
10 generally, a twelve month period of time in which a
11 company's financial results are analyzed and adjusted,
12 if necessary, to test a company's earnings under
13 present or, in the case of Ken Gas, proposed rates. In
14 this case the Staff decided on a five year period of
15 time. The Staff felt that in order to analyze and test
16 the proposed rates of the Company a longer test period
17 was necessary. This process of analyzing the results
18 of operations assists the Commission in determining
19 fair and reasonable rates on which the Company will be
20 allowed an opportunity to earn a reasonable return on
21 its investments.

22 Q. You referred to the term "fair rate of return". What
23 is its definition and its importance to the Commission?

24 A. A rate of return is the compensation for capital
25 required by the utility to provide service to the
26 customer. A "fair rate of return" is a return,
27 expressed as a percentage, approximating the cost of

1 the capital. And, the cost of this capital is the
2 price that is paid for its use. This means that the
3 fair rate of return is what capital invested would be
4 able to earn if invested under similar conditions
5 elsewhere.

6 In the context of regulation of utilities, a fair rate
7 of return is the percentage figure multiplied by rate
8 base which produces the return available to cover
9 interest on debt and dividends on preferred and common
10 stock.

11 Generally, the Commission would consider what
12 constitutes a fair rate of return and adjust rates so
13 as to allow investors to earn this rate of return. The
14 Company failed to show calculations for what it
15 considered a fair rate of return that it should be
16 allowed the opportunity to earn. The staff Economist
17 computed an overall return of 11.95% and an equity
18 return of 15%.

19 Q. Would you please summarize the Company's request?

20 A. The Company requested a Certificate of Convenience and
21 Necessity to install and operate a natural gas
22 distribution system within the city limits of Jellico,
23 Tennessee. Also, it requested approval of a rate to
24 charge customers using the gas. Finally, it requested
25 approval of the construction cost to build the system
26 and the financing arrangements necessary to pay for the
27 debt.

1 Q. Is there a need for a natural gas system in Jellico,
2 Tennessee?

3 A. Yes, the City of Jellico is a municipal corporation
4 located in Campbell County, Tennessee and is without a
5 natural gas distribution system. There is currently a
6 need and demand for a natural gas distribution system
7 to provide natural gas to the citizens of Jellico. In
8 order to supply the need for natural gas the Jellico
9 City Counsel has awarded a franchise to Ken Gas of
10 Tennessee, Inc. for the intent and purpose of
11 installing and operating a natural gas distribution
12 system within the city limits.

13 Q. What is your recommendation to this Commission?

14 A. I recommend that this Commission after viewing the
15 Company's and Staff's testimony and exhibits grant a
16 Certificate of Convenience and Necessity to Ken Gas of
17 Tennessee, Inc. to operate a natural gas distribution
18 system within the city limits of Jellico, Tennessee.

19 Q. How would you like to present your exhibits with their
20 adjustments to the Commission?

21 A. As there are no controversial issues between the
22 Company and myself, I would like to summarize each
23 exhibit and provide a brief explanation for adjustments
24 of material importance.

25 Schedule 1 - Shows the forecasted earnings for the
26 first five years of operation.

1 Schedule 2 - Shows for the initial five years of
2 operations total sales volume for each class of
3 customer priced out using the proposed rates. This
4 provided total revenues from gas sales for the five
5 years.

6 Schedule 3 - Purchase gas was computed based on the
7 projected sales volumes multiplied by the gas cost per
8 Mcf. Total cost of gas was then adjusted for loss and
9 unaccounted for gas at a reasonable rate of 2%. This
10 provided the total cost of gas purchased.

11 Schedule 4 - Other operating expenses of the Company
12 were found to be fair and reasonable by the Staff and
13 were adopted as presented.

14 Schedule 5 - Shows other operating taxes that the
15 Company is required by law to pay as a result of doing
16 business.

17 Franchise Tax is a tax imposed on corporations for
18 the privilege of engaging in business within the State
19 of Tennessee. The franchise tax shown was computed by
20 applying the statutory franchise tax rate of \$.25 per
21 \$100 to the net utility plant in service at the end of
22 the Company's fiscal year.

23 Gross Receipts is another tax that corporations
24 pay for the privilege of conducting business. Gross
25 receipts was computed on the total revenues received
26 less the applicable exemption for gas companies of
27 \$5000 multiplied by the statutory gross receipt rate of

1 3%. Generally, gross receipts taxes are computed on
2 prior year total gross receipts and payable in the
3 current year. But for simplistic purposes, gross
4 receipts taxes are calculated on the current total
5 revenues.

6 PSC Fees, public utilities operating within the
7 State of Tennessee and subject to the control and
8 jurisdiction of the Commission must pay a fee for the
9 inspection, control, and regulation of the company.
10 The fee is based on total revenues less a \$5000
11 exemption multiplied by the statutory rate of 3%.

12 Payroll Taxes, utilities like other employers are
13 required to pay social security and unemployment taxes
14 on the wages and salaries paid to their employees. The
15 Company's payroll tax was computed based on its
16 projected three (3) employees multiplied by the
17 applicable state and federal unemployment tax rates and
18 social security tax rate.

19 Property Tax is based on appraised net book value
20 of the property in service, multiplied by the
21 applicable statutory, equalization, city, and county
22 rates. The Company's property tax shown was computed
23 based on the assessed value of its property by the TPSC
24 Assessment Division. In reviewing the Company's filed
25 financial statements the Staff noted that the Company
26 did not show operating other taxes as an expense of
27 conducting business. The Staff has corrected this by

1 the inclusion of other operating taxes in its operating
2 expense section as shown on Schedule 1.

3 Schedule 6 - Details the Staff's calculation of Federal
4 Income Tax and Tennessee Excise Tax for the first five
5 years of operations. The Staff included the 5% surtax
6 in year 5 placed on taxable income over \$100,000.
7 Interest expense on the loan was computed by
8 multiplying the projected yearly rate base by the
9 weighted cost of debt. Because interest expense is tax
10 deductible it must be deducted before arriving at
11 taxable income.

12 After arriving at taxable income, the Staff computed
13 excise tax using the statutory rate of 6% as shown on
14 line 7. Next, the Staff computed FIT using statutory
15 rates of 15% for taxable income up to \$50,000, 25% for
16 income over \$50,000 and up to \$75,000 and 34% for
17 income over \$75,000.

18 Schedule 7 - Shows the estimated rate base for the
19 first five years of operations. Line 1, Utility Plant
20 in Service \$1,000,000 represents the Company's
21 estimated cost for the natural gas system in Jellico.
22 Line 2, Working Capital is a cash working capital
23 allowance that is included in the rate base to meet the
24 day to day cost of providing services to the customer.
25 Line 4, Accumulated Depreciation represents the amount
26 of depreciation which has been accumulated through

1 depreciation expense over the lives of the various
2 plant items included in utility plant in service.
3 After considering all of the above items, the Staff
4 estimated the rate base for the first five years of
5 operations as shown on Schedule 7. Rate base
6 represents the investment on which the Company should
7 be allowed an opportunity to earn a fair rate of
8 return.

9 Schedule 8 - Shows the capital structure of Ken Gas of
10 Jellico. The Commission's staff Economist estimated a
11 fair rate of return to be 11.95%. This consists of
12 87.29% debt at a cost of 11.50% and of 12.71% equity at
13 a cost of 15%.

14 Schedule 9 - Details the depreciation expense schedule
15 as computed by the Commission's staff Engineer. Total
16 depreciation expense was computed to be ~~\$26,239~~ ^{\$24,239 AC} with a
17 composite rate of .024239.

18 Q. Does this conclude your testimony?

19 A. Yes.

KEN-GAS OF JELICO
FORECAST OF EARNINGS
 For the Initial Five Years of Operation

Line No.		1988-89	1989-90	1990-91	1991-92	1992-93
OPERATING REVENUES A/						
1	Residential Revenues	\$ 170,625	\$ 204,750	\$ 235,463	\$ 259,350	\$ 285,285
2	Commercial Revenues	148,500	178,875	205,875	226,125	249,750
3	Industrial Revenues	105,300	140,400	175,500	175,500	210,600
4	Total Revenues	\$ 424,425	\$ 524,025	\$ 616,838	\$ 660,975	\$ 745,635
OPERATING EXPENSES						
5	Purchase Gas B/	\$ 209,738	\$ 259,718	\$ 306,467	\$ 327,476	\$ 370,345
6	Salaries & Wages G/	34,000	35,300	35,300	35,300	35,300
7	Controller G/	12,000	12,500	12,500	12,500	12,500
8	Depreciation C/	24,239	24,239	24,239	24,239	24,239
9	Office Rent G/	3,600	3,600	3,600	3,600	3,600
10	Insurance G/	4,000	4,000	4,000	4,000	4,000
11	Truck Expense G/	3,600	3,600	3,600	3,600	3,600
12	Other Operating Exp. D/	28,088	29,832	32,039	34,221	36,308
13	Other Taxes E/	28,376	29,660	30,853	31,389	32,472
14	Excise Tax F/	0	1,410	4,066	5,424	7,853
15	Federal Income Tax F/	0	3,314	10,925	17,139	31,292
16	Total Oper. Expenses	\$ 347,640	\$ 406,773	\$ 467,589	\$ 498,888	\$ 561,518
17	NET OPERATING INCOME	\$ 76,785	\$ 117,252	\$ 149,248	\$ 162,087	\$ 184,117
18	RATE BASE H/	\$ 1,000,346	\$ 980,773	\$ 960,887	\$ 938,819	\$ 918,565
19	RATE OF RETURN (L17/L18)	7.68%	11.96%	15.53%	17.26%	20.04%

A/ Schedule 2.
 B/ Schedule 3.
 C/ Schedule 9.
 D/ Schedule 4.
 E/ Schedule 5.
 F/ Schedule 6.
 G/ Company's Workpapers.
 H/ Schedule 7.

KEN-GAS OF JELICO
Projected Revenue
For the Initial Five Years of Operation

Line No.	Customers	Price per MCF	No. of Customers	Sales Vol. Per Customer	Total Sales Vol. (MCF)	Revenues (Col. 1#Col. 4)
1	Residential	\$ 7.50	250	91	22,750	\$ 170,625
2	Commercial	\$ 7.50	44	450	19,800	148,500
3	Industrial	\$ 6.50	3	5,400	16,200	105,300
4	Year 1 Total		297	5,941	58,750	\$ 424,425
5	Residential	\$ 7.50	300	91	27,300	\$ 204,750
6	Commercial	\$ 7.50	53	450	23,850	178,875
7	Industrial	\$ 6.50	4	5,400	21,600	140,400
8	Year 2 Total		357	5,941	72,750	\$ 524,025
9	Residential	\$ 7.50	345	91	31,395	\$ 235,463
10	Commercial	\$ 7.50	61	450	27,450	205,875
11	Industrial	\$ 6.50	5	5,400	27,000	175,500
12	Year 3 Total		411	5,941	85,845	\$ 616,838
13	Residential	\$ 7.50	380	91	34,580	\$ 259,350
14	Commercial	\$ 7.50	67	450	30,150	226,125
15	Industrial	\$ 6.50	5	5,400	27,000	175,500
16	Year 4 Total		452	5,941	91,730	\$ 660,975
17	Residential	\$ 7.50	418	91	38,038	\$ 285,285
18	Commercial	\$ 7.50	74	450	33,300	249,750
19	Industrial	\$ 6.50	6	5,400	32,400	210,600
20	Year 5 Total		498	5,941	103,738	\$ 745,635

KEN-GAS OF JELICO
Cost of Purchased Gas
For the Initial Five Years of Operation

Line No.		1988-89	1989-90	1990-91	1991-92	1992-93
1	MCF per Year	58,750	72,750	85,845	91,730	103,738
2	Gas Cost per MCF	\$ 3.50	\$ 3.50	\$ 3.50	\$ 3.50	\$ 3.50
3	Cost of Gas	\$ 205,625	\$ 254,625	\$ 300,458	\$ 321,055	\$ 363,083
4	Loss & Unaccounted for Gas (Computed at 2%)	2.00%	2.00%	2.00%	2.00%	2.00%
		\$ 4,113	\$ 5,093	\$ 6,009	\$ 6,421	\$ 7,262
5	Total Cost of Gas	\$ 209,738	\$ 259,718	\$ 306,467	\$ 327,476	\$ 370,345

SOURCE: Company's Workpapers and Contract Agreement with Delta Natural Gas Company, Inc.

KEN-GAS OF JELLICO
Other Operating Expenses
For the Initial Five Years of Operation

Line No.		1988-89		1989-90		1990-91		1991-92		1992-93
1	Telephone	\$ 1,200	\$	1,200	\$	1,200	\$	1,500	\$	1,500
2	Utilities	1,200		1,200		1,300		1,300		1,400
3	Billing Exp.; Supplies	6,000		6,000		6,500		6,500		7,000
4	Printing, Booklets	4,000		3,000		2,500		2,500		2,000
5	Travel, Training	1,200		1,200		1,500		1,500		1,500
6	License & Dues	1,000		1,000		1,000		1,000		1,000
7	Miscell. Exp. @ 1%	4,244		5,416		6,519		6,961		7,954
8	Repairs @ .5%	2,122		2,708		3,260		3,480		3,977
9	Bad Debts @ .5%	2,122		2,708		3,260		3,480		3,977
10	Professional Fees	5,000		5,000		5,000		6,000		6,000
11	Total Other Expenses	\$ 28,088	\$	29,432	\$	32,039	\$	34,221	\$	36,308

Source: Company's Workpapers.

KEN-GAS OF JELICO
Total Other Operating Taxes
For the Initial Five Years of Operation

Line No.		1988-89	1989-90	1990-91	1991-92	1992-93
1	FRANCHISE TAX	\$ 2,440	\$ 2,380	\$ 2,320	\$ 2,260	\$ 2,200
2	GROSS RECEIPTS	4,404	5,450	6,424	6,888	7,777
3	PSC FEES	1,268	1,567	1,846	1,978	2,232
4	PAYROLL TAXES	2,725	2,725	2,725	2,725	2,725
5	PROPERTY TAX	17,538	17,538	17,538	17,538	17,538
6	TOTAL TAXES	\$ 28,376	\$ 29,660	\$ 30,853	\$ 31,389	\$ 32,472

NOTE: Excludes Excise & Federal Income Taxes.
SOURCE: Staff's Workpapers.

KEN-GAS OF JELICO
Federal Income Tax & Excise Tax
For the Initial Five Years of Operation

Schedule 6

Line No.			1988-89		1989-90		1990-91		1991-92		1992-93
1	Revenues	A/ \$	424,425	\$	524,025	\$	616,838	\$	660,975	\$	745,635
	Less:										
2	Operating Expenses	A/ \$	319,265		372,388		421,745		444,936		489,891
3	Other Taxes	A/	28,376		29,660		30,853		31,389		32,472
4	Interest Expense	B/	100,435		98,470		96,473		94,257		92,224
5	Taxable Income	\$	(23,650)	\$	23,507	\$	67,766	\$	90,393	\$	131,048
6	Excise Tax Rate		6.00%		6.00%		6.00%		6.00%		6.00%
7	Excise Tax	\$	(1,419)	\$	1,410	\$	4,066	\$	5,424	\$	7,863
8	Taxable Income	\$	(22,231)	\$	22,096	\$	63,700	\$	84,969	\$	123,185
9	FIT Rate up to		15.00%		15.00%		15.00%		15.00%		15.00%
10	1st \$50,000										
11	FIT at 15% Rate	\$	(3,335)	\$	3,314	\$	7,500	\$	7,500	\$	7,500
12	Taxable Income over						13,700		25,000		25,000
	1st \$50,000										
13	FIT Rate over \$50,000						25.00%		25.00%		25.00%
	& up to \$75,000										
14	FIT at 25%						3,425		6,250		6,250
15	Taxable Income over										
	\$75,000								9,969		48,185
16	FIT Rate over \$75,000								34.00%		34.00%
17	FIT at 34%								3,389		16,383
18	Surtax of 5% over \$100,000										1,159
19	Total FIT	\$	(3,335)	\$	3,314	\$	10,925	\$	17,139	\$	31,292

A/ Schedule 1.

B/ Company's Projected Yearly Rate Base * Weighted Cost of Debt.
 (Schedule 7 & Schedule 8).

KEN-GAS OF JELICO
RATE BASE
For the Initial Five Years of Operation

Schedule 7

Line No.		1988-89	1989-90	1990-91	1991-92	1992-93
	<u>ADDITIONS</u>					
1	Plant in Service A/ \$	1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000
2	Working Capital C/	24,585	29,012	33,126	35,058	38,804
3	Total Additions \$	1,024,585	\$ 1,029,012	\$ 1,033,126	\$ 1,035,058	\$ 1,038,804
	<u>DEDUCTIONS</u>					
4	Accum. Depreciation B/ \$	24,239	\$ 48,239	\$ 72,239	\$ 96,239	\$ 120,239
5	Rate Base \$	1,000,346	\$ 980,773	\$ 960,887	\$ 938,819	\$ 918,565
A/ Company's Workpapers.						
B/ Staff's Workpapers.						
C/ Working Capital:						
1	Total Operating Exp. \$	347,640	\$ 406,773	\$ 467,589	\$ 498,888	\$ 561,518
	Less:					
2	FIT	0	3,314	10,925	17,139	31,292
3	Other Taxes	28,376	31,071	34,919	36,813	40,335
4	Depreciation	24,239	24,239	24,239	24,239	24,239
5	Total \$	295,026	\$ 348,149	\$ 397,506	\$ 420,697	\$ 465,652
6	Working Capital (L.5 / 12 mths.) \$	24,585	\$ 29,012	\$ 33,126	\$ 35,058	\$ 38,804

KEN-GAS OF JELICO
Capital Structure
For the Initial Five Years of Operation

Line No.		Capital Structure	% of Capital	Cost Rate	Weighted Cost
1	Long-Term Debt	\$ 1,000,000 A/	87.29%	11.50%A/	10.04%
2	Common Stock	145,570 A/	12.71%	15.00%B/	1.91%
3	Total	\$ 1,145,570 =====	100.00% =====		11.95% =====

A/ Company's Workpapers.

B/ Staff Economist's equity cost rate estimation.

KEN-GAS OF JELLICO
Depreciation Expense Schedule
For the Initial Five Years of Operation

<u>Line No.</u>	<u>Plant Accounts</u>	<u>Investment</u>	<u>Rate</u>	<u>Average Life</u>	<u>Depreciation Expense</u>
1	Receiving Station	\$ 37,500	3.00%	33 years	\$ 1,125
2	District Regulator	3,500	3.00%	33 years	105
3	Distribution Mains	740,353	2.00%	50 years	14,807
4	Service Lines	116,025	2.50%	40 years	2,901
5	Meters	21,180	3.00%	33 years	635
6	Service Regulators	4,942	3.00%	33 years	148
7	Industrial Sets	6,000	3.00%	33 years	180
8	Case 580 Backhoe	37,500	6.70%	15 years	2,513
9	Service Truck	10,500	10.00%	10 years	1,050
10	Fusing Machine, Tools & Equipment	17,500	3.00%	33 years	525
11	Computer & Office Equipment	5,000	5.00%	20 years	250
12	Total	\$ <u>1,000,000</u> =====			\$ <u>24,239</u> =====

* Composite Rate 0.024239

SOURCE: Mr. Ted Tingley, Commission's Engineer.



Jellico Gas Utility, Inc.

P.O. Box 119
Jellico, TN 37782-0119
(615) 784-2128

January 15, 1990

RECEIVED

JAN 18 1990

DIVISION OF UTILITY
ENGINEERING & SERVICES

Mr. Ralph Dennis
Kentucky Public Service Commission
P. O. Box 615
Frankfort, Kentucky 40602

Pending O

Re: Jellico, TN natural gas system

Dear Mr. Dennis:

In response to your request for information several residents of Jellico that live in Kentucky just across the Tennessee state line have requested natural gas service.

Natural gas for the Jellico gas system is supplied by Delta Natural Gas Company, Inc. from an M/R station in Kentucky. A 7(f) exemption was issued by FERC to transport natural gas across the Kentucky-Tennessee border.

Mr. Earnest F. Burke, Gas Safety Inspector for the Tennessee Public Service Commission is the inspector for the gas system. His office phone is (615) 741-2844 and home phone is (615) 395-4655.

If agreeable with the Kentucky Public Service Commission natural gas will be supplied to the Kentucky residents under the same conditions as the residents in Jellico, Tennessee. This would have to be subject to Tennessee Public Service Commission approval and acceptance.

After your planned February 1, 1990 inspection visit to Jellico additional information will be provided if needed.

Your assistance and consideration in this matter is appreciated.

Respectfully yours,

Walton R. Haddix
Walton R. Haddix

cc Opal Leach

enclosure



Delta Natural Gas Company, Inc.

6011 Lexington Road
Winchester, Kentucky 40391

808-744-8171

December 7, 1989

RECEIVED

DEC 12 1989

DIVISION OF
ENGINEERING SERVICES

Pending ⊙

Mr. Ralph E. Dennis
Manager, Gas Branch
Public Service Commission
730 Schenkel Lane
P. O. Box 615
Frankfort, KY 40602

Dear Ralph:

I am pleased to respond to your letter of November 13, 1989 regarding Jellico Gas Utility's interest in serving certain residents in Kentucky.

I have recently talked with Mr. Earl Holsapple of Jellico Gas Utility and he has informed me that there may be as many as fifty (50) residents of Kentucky that could be feasibly served by Jellico Gas Utility. It would not be feasible for Delta to directly serve these prospective customers.

Delta has no objection to Jellico Gas Utility serving customers in Kentucky provided that Jellico Gas Utility does not attempt to duplicate service provided by Delta. It is our feeling that the question of jurisdiction should be determined by the respective Public Service Commissions and Delta has no opinion on this issue.

We encourage the respective Public Service Commissions to resolve this issue in such a manner that residents of the Jellico area will not be discouraged from obtaining natural gas service.

We appreciate the opportunity to respond and if I can be of any further assistance please contact me at your convenience.

Sincerely,

Robert C. Hazelrigg

Robert C. Hazelrigg
Vice President
Marketing and Public Relations

TENNESSEE PUBLIC SERVICE COMMISSION
460 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243-0505

KEITH BISSELL, CHAIRMAN
STEVE HEWLETT, COMMISSIONER
FRANK COCHRAN, COMMISSIONER

PAUL ALLEN, EXECUTIVE DIRECTOR
HENRY M. WALKER, GENERAL COUNSEL



May 9, 1990

RECEIVED

MAY 29 1990

PUBLIC SERVICE
COMMISSION

Mr. Lee M. McCracken
Executive Director
Kentucky Public Service Commission
730 Schenkel Lane
P.O. Box 615
Frankfort, KY 40602

Pen-0

Re: Jellico Gas Utility, Inc.

Dear Mr. McCracken:

I have reviewed your letter which proposes that the Tennessee Public Service Commission extend its jurisdiction of Jellico Gas Utility, Inc. to approximately 57 perspective customers in Kentucky. We have had similar arrangements with Commissions in other states contiguous to Tennessee and believe that this proposal is feasible. I recommend that the Kentucky Commission issue an order giving Jellico Gas Utility authority to operate in the proposed territory pursuant to the rates and terms approved by the Tennessee Commission. We would regulate the entire system as a whole including rates, service and safety. When we issue an order with respect to the company, it could be sent to your Commission for ratification with respect to the Kentucky service. I see no problem with the Kentucky PSC reviewing the situation periodically to determine if it wishes to reassert jurisdiction over the Kentucky customers.

I am referring the matter to Glynn Blanton, our Director of Gas Pipeline Safety and D. Billye Sanders, Assistant General Counsel to continue to work with you on the details.

Sincerely,

Keith Bissell
Chairman

- c: Glynn Blanton
- D. Billye Sanders
- Walton Haddix, Jellico Gas Utility, Inc.
- Paul Allen, Executive Director
- Hal Novak, Accounting Division

Schedule 2(a)-4

Fentress, Tennessee Natural Gas Transmission Pipeline and Stations Description

FENTRESS ROW EXPLANATION

GASCO supplies natural gas to individual customers whose properties lie within the B & W Pipeline that GASCO's wholly owned subsidiary, The Titan Energy Group, Inc. (TTEG) currently owns. Each customer has an individual meter off the B & W Pipeline. Further information is as follows.

1. **REDACTED**

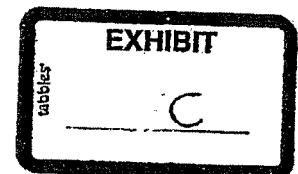
2. **REDACTED**

3. **REDACTED**

4. **REDACTED**

5. **REDACTED**

6. **REDACTED**



Transmission Station.

Seller currently has six individual meters at the following service points on the B&W Pipeline:

- (i) **REDACTED**
- (ii) **REDACTED**
- (iii) **REDACTED**
- (iv) **REDACTED**
- (v) **REDACTED**
- (vi) **REDACTED**

BEFORE THE TENNESSEE REGULATORY AUTHORITY

AT NASHVILLE, TENNESSEE

August 22, 2001

IN RE:

PETITION OF GASCO DISTRIBUTION
SYSTEMS, INC. TO APPROVE
BYRDSTOWN, TENNESSEE FRANCHISE

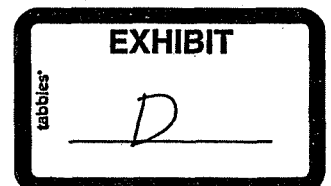
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DOCKET NO. 01-00113

INITIAL ORDER APPROVING PETITION OF GASCO DISTRIBUTION SYSTEMS,
INC. FOR APPROVAL OF A GRANT OF A PRIVILEGE OR FRANCHISE BY TOWN
OF BYRDSTOWN, PURSUANT TO TENN. CODE ANN. § 65-4-107

This matter is before the Tennessee Regulatory Authority ("Authority" or "TRA") for consideration of the Petition of Gasco Distribution Systems, Inc. ("Gasco" or the "Petitioner") for approval of the franchise or privilege granted to Gasco by the Town of Byrdstown, Tennessee ("Byrdstown" or the "Town"). On April 10, 2001, a hearing was held before Hearing Officer J. Richard Collier, for the purpose of allowing Gasco and Byrdstown to introduce evidence in support of their request for approval of Gasco's Petition, the Byrdstown Natural Gas Franchise Ordinance of 2000 ("Byrdstown Ordinance"), and the franchise for natural gas service granted to Gasco by Byrdstown.

After careful consideration of the Petition, the Byrdstown Ordinance and the entire record in this matter, including testimony from Gasco and Byrdstown, the Hearing Officer approves the Petition, the Byrdstown Ordinance, and the franchise granted to Gasco by Byrdstown.



Background

On December 8, 1993, the Tennessee Public Service Commission (“TPSC”) entered an Order approving the transfer of a certificate of public convenience and necessity (“CCN”) for the operation of a natural gas distribution system from Jellico Gas Utility, Inc. to Gasco.¹ The CCN permitted Gasco to operate the gas system within Jellico, Tennessee. Gasco’s CCN was amended² on June 12, 1997 to include Pickett County, Tennessee, which is the county where Byrdstown is located. Also, on June 12, 1997, the Authority entered an Order approving a franchise agreement between Gasco and Pickett County, which provided for Pickett County to receive a franchise fee of two percent (2%) of Gasco’s net natural gas sales in exchange for an exclusive franchise to supply natural gas service in Pickett County, not including the Town of Byrdstown, for forty (40) years.³ The Authority’s Order specifically stated that Gasco would file a separate franchise agreement with the Town of Byrdstown at a later date. On February 1, 2001, Gasco filed its Petition for approval of a franchise granted to Gasco through the Byrdstown Ordinance, said franchise being the subject of this docket.

The Byrdstown Ordinance

On November 13, 2000, the Town of Byrdstown passed Ordinance 00-2, which grants to Gasco a franchise,

[t]o operate and maintain a gas system in the town of Byrdstown, Tennessee. Including a system of gas mains and service pipes for the purpose of transmitting and distributing gas in, upon, across, along and under the highways, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways and other public ground of the town of Byrdstown, Tennessee.⁴

¹ See *Order*, Petition of Gasco Distribution Systems of Tennessee, Inc. for Approval of Transfer of Authority to Provide Utility Services and of Plant and Facilities from Jellico Gas Utility, Inc., to Gasco Distribution Systems of Tennessee, Inc., TPSC Docket No. 93-07841, December 8, 1993.

² *Order Amending Certificate of Convenience and Necessity*, In re: Petition of Gasco Distribution Systems, Inc. to Amend its Certificate of Convenience and Necessity, TRA Docket No. 97-00417, June 12, 1997.

³ *Order Approving Pickett County Franchise*, In re: Petition of Gasco Distribution Systems, Inc. to Approve Pickett County Franchise, TRA Docket No. 97-00385, June 12, 1997, p. 2.

⁴ Byrdstown Ordinance, p. 1.

Section 3 of the Ordinance provides as follows:

There is hereby granted by the Town of Byrdstown, Tennessee, to Gasco Distribution Systems, Inc., its successors and assigns, the exclusive right, authority, privilege and franchise to erect, construct, operate and maintain a system of gas mains, service pipes, regulator [sic] all other necessary and appropriate equipment and facilities for the transmission and distribution of gas in, upon, across, along and under the highways, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways and other public grounds in the present or future corporation limits of the Town of Byrdstown and in the environs of said Town, and to import, transport, sell and distribute gas, whether natural, manufactured, or mixed, within the Town and its environs, for the supplying and selling of said gas to said Town, and the inhabitants, institutions, and business thereof; and for such purposes to construct, operate, maintain, renew, replace, repair, and extend all necessary gas mains, service pipes and other appliances, fixtures, and facilities as may be necessary for said purposes, to-wit: the transmission, distribution and sale of such gas to said Town and the inhabitants thereof, for domestic, commercial, industrial uses, and such other purposes for which it is or may hereafter be used.

A franchise fee is established in Section 13 of the Ordinance as follows:

Subject to approval by the Tennessee Regulatory Authority, the Town shall bill a surcharge up to two percent (2%) of the natural gas sales exclusive of taxes and other charges from any customer of Gasco Distribution Systems, Inc. located within the franchise area granted by the Town. The Company shall include said surcharge as a separate item on its bills to its customers in the Town and shall pay said amount received from its customers to the Town within twenty-one (21) days after receipt.

Section 4 of the Ordinance establishes a franchise term of twenty (20) years with automatic renewals consisting of twenty (20) year terms, subject to termination. Section 5 provides that all construction, operation, and maintenance in relation to the franchise shall comply with all applicable engineering and safety codes, including those of the TRA. Section 10 further provides that the Ordinance is subject to and incorporates all rules and regulations of the TRA. In addition, under Section 12, Gasco is not permitted to sell or transfer the rights conferred to it by the Ordinance without obtaining the approval of the TRA. Section 19 requires Gasco to obtain all necessary approvals for operation from the TRA.

Section 14 of the Ordinance provides grounds for termination of franchise by Byrdstown, including:

C. The Company fails to use reasonable diligence in making natural gas available to all residents of the Town. Reasonable diligence requires availability to at least sixty percent (60%) of the Town residents within twenty-four (24) months of the granting of this franchise. Reasonable diligence requires availability to ninety percent (90%) of the Town residents within forty-eight (48) months of granting the franchise, and availability to one-hundred percent (100%) of the Town's residents within seventy-two (72) months. For purposes of this section, Town shall mean the political boundaries of the Town on the date of the enactment of this Ordinance.

Further, Sections 15 and 20 of the Ordinance set forth the circumstances and conditions under which the franchise may be considered terminated and the resulting conveyance or abandonment of the natural gas system. Section 15 specifically provides:

In the event Company ceases to operate the utility for more than ninety (90) continuous days or in the event the authority to operate the utility is revoked or terminated by the Tennessee Regulatory Authority or in the event the franchise is terminated by the Town, then and in that event, the Company shall have the option, but not the obligation to convey the natural gas system to the Town for the Fair Market Value of the system as determined by the American Arbitration Association. The Town shall have ninety (90) days to accept or reject the conveyance of the system for fair market value.

Travel of this Case

On February 1, 2001, pursuant to Tenn. Code Ann. § 65-4-107, Gasco filed its *Petition of Gasco Distribution Systems, Inc. to Approve Byrdstown, Tennessee Franchise* ("Petition") to provide natural gas services in Byrdstown, Tennessee. The Petition states that the franchise will result in gas services being provided in areas where service is not currently available. Further, the Petition states,

Both Gasco and Byrdstown believe that approval of this franchise will serve the public interest by bringing gas service, new industry, and jobs to Byrdstown.⁵

⁵ Petition, February 1, 2001, p. 1.

On March 27, 2001, the Authority issued a Notice setting this case for Hearing on April 10, 2001. The Notice was sent to the parties and, pursuant to Tenn. Code Ann. § 65-4-203, to other persons potentially interested in this matter. At the regularly scheduled Authority Conference held on April 3, 2001, the Directors appointed the General Counsel or his designee Hearing Officer in this matter to render a decision on the merits of the Petition. At the request of the Petitioner, the pre-filing of testimony was waived and live testimony and documentation pertaining to the Petition and franchise were presented at the Hearing.

Hearing

The Hearing on the merits was held on April 10, 2001, with the following attorneys appearing on behalf of Gasco and Byrdstown:

Gasco Distribution Systems, Inc. – **Henry Walker, Esq.**, Boulton, Cummings, Conners & Berry, PLC, 414 Union Street, Suite 1600, P.O. Box 198062, Nashville, Tennessee 37219; and

Town of Byrdstown – **Phillip M. Smalling, Esq.**, Hassler & Smalling, West Main Street, Byrdstown, Tennessee, 38549.

Members of Authority's Energy and Water Division and Gas Pipeline Safety Division attended and participated in the Hearing. A representative of the Consumer Advocate and Protection Division, Office of the Attorney General, attended but did not participate in the Hearing. Although interested utility districts, municipalities, and counties were provided notice of the Hearing pursuant to Tenn. Code Ann. § 65-4-203(b), no representatives of these entities were in attendance. There were no members of the public-at-large in attendance.

During the Hearing, the following filings were made a part of the evidentiary record: the Petition, the Byrdstown Ordinance, and documentation reflecting Gasco's proposed service to Byrdstown. Charles Hercher, vice president of operations for Gasco, and Paul Jordan, Mayor of the Town of Byrdstown, testified in support of the Petition. Both witnesses were examined by

counsel for Gasco and Byrdstown and responded to questions from the Authority. Gasco was directed to file specific exhibits after the Hearing. Late-filed exhibits included maps showing the location of gas service and copies of court orders relating to the termination of a previous gas franchise between the Town of Byrdstown and Ken Gas of Tennessee, Inc., Ken Gas of Byrdstown, Inc., and Kenneth R. Turner. At the conclusion of the Hearing, the Hearing Officer took all the remaining matters under advisement.

The Petitioner's Proof

Charles Hercher testified on behalf of Gasco as the first witness. Mr. Hercher described Gasco's proposal to provide natural gas service to citizens of Byrdstown. Mr. Hercher testified that Gasco already has several large industrial customers in the Byrdstown area and by extending loops around Byrdstown with lateral connections, Gasco could serve around 250 customers in Byrdstown within a three (3) year time period.⁶ Any additional financial burden to Gasco to operate and maintain the proposed system would be minimal because Gasco already has employees in the Byrdstown area servicing Gasco's industrial customers.⁷

According to Mr. Hercher, at the present time the citizens of Byrdstown rely on propane as their heating fuel. Several years ago the Town had natural gas service from local wells for a short period.⁸ Mr. Hercher testified that the franchise is in the best interest of Gasco and of the people of Byrdstown because the town could replace a more expensive fuel source, propane, with less expensive natural gas. Gasco in turn, would gain a larger customer base in the Byrdstown area, which would provide some added revenues without much added expense.⁹ At the conclusion of the expansion project, Gasco expects to have approximately 250 customers.¹⁰

⁶ See Transcript of Hearing, April 10, 2001, pp. 6-14 (Testimony of Mr. Charles Hercher, Vice President of Operations for Gasco).

⁷ *Id.*, at pp. 14-15.

⁸ *Id.*, at pp. 16-17.

⁹ *Id.*, at p. 15.

¹⁰ *Id.*, at pp. 17-18.

Mr. Hercher testified that Gasco plans to conduct a street-by-street survey in Byrdstown to determine what certain percentage of residents desire service from Gasco and then lay pipe according to the survey. Gasco is already serving customers outside of the city limits through a franchise in the County that permits it to serve the Hutchison plants.¹¹ According to Mr. Hercher, Gasco has more than enough firm capacity to provide service to customers, in part because Gasco bought extra capacity in the summer of 2000.¹² Gasco is considering using part of the gas distribution system already in the ground in Byrdstown, primarily some four-inch plastic lines in the downtown area, and will be testing this section to determine whether it is operable.¹³

The system Gasco will install will be one hundred percent (100%) plastic, so very little maintenance will be required once construction is completed. Mr. Hercher testified that Gasco will probably subcontract much of the construction.¹⁴ Once the system is in operation, Gasco will be checking meters, pressures, and regulators.¹⁵ Mr. Hercher stated that Gasco has not determined the cost to the consumer to tap onto Gasco's line. In the past, a tap fee of \$150 has been requested in most areas, with a cost for the service line of around \$1.00 per foot.¹⁶

According to Mr. Hercher, the supply point for the gas supplied to Byrdstown will be south of Deer Lodge, Tennessee, originating in Morgan County and traveling through Fentress County.¹⁷ Mr. Hercher stated that the service line from which the proposed service will be

¹¹ *Id.*, at p. 18. See *Order Approving Picket County Franchise*, TRA Docket No. 97-00385, June 12, 1997. Gasco obtained approval of a special contract with Hutchinson Byrdstown Limited Partnership through the Authority's Order in TRA Docket No. 97-00386, June 12, 1997.

¹² *Id.*, at p. 20.

¹³ *Id.*, at pp. 21-22.

¹⁴ *Id.*, at p. 24.

¹⁵ *Id.*, at pp. 24-25.

¹⁶ *Id.*, at p. 26.

¹⁷ *Id.*, at p. 38.

provided to Byrdstown does not run through any areas where Gasco does not already have a CCN or a franchise.¹⁸

Mr. Hercher testified that Gasco currently provides gas service to Jellico, Tennessee and manages a system in Crossville, Tennessee.¹⁹ Gasco also has some residential customers within Pickett County.²⁰ Mr. Hercher testified that Gasco intends to comply with all TRA regulations, including those pertaining to the minimum federal safety standards.²¹

Mayor Paul Jordan testified that in his opinion approval of the franchise is in the best interest of the residents of Byrdstown.²² According to Mayor Jordan, Byrdstown was approached by other companies proposing to provide gas service, but the Town had concerns that these companies could not be relied upon to carry through with their plans.²³ After consideration, Gasco emerged as the top choice for providing service to the town.²⁴ Mayor Jordan testified that the requirement under Section 14 of the Ordinance that gas be available to one hundred percent (100%) of the customers in Byrdstown within 72 months should be interpreted as referring to one hundred percent (100%) of the residents who desire the gas services, rather than one hundred percent (100%) of all homes and businesses.²⁵

According to the City Attorney, Phillip Smalling, the Byrdstown Ordinance provides for a franchise fee of “up to two percent (2%)” because it was the town council’s intent to leave room to negotiate a lower fee, if necessary, in order to make sure that the project got under way. Mr. Smalling stated that the Town’s chief motivation was to provide gas service to its residents rather than to obtain revenues from the franchise fee.²⁶

¹⁸ *Id.*, at p. 43.

¹⁹ *Id.*, at p. 41.

²⁰ *Id.*, at p. 41.

²¹ *Id.*, at p. 38.

²² See Transcript of Hearing, April 10, 2001, p. 53 (Testimony of Mr. Paul Jordan, Mayor of Town of Byrdstown).

²³ *Id.*, at p. 54.

²⁴ *Id.*, at p. 54.

²⁵ *Id.*, at pp. 55-56.

²⁶ See Transcript of Hearing, April 10, 2001, p. 55 (Testimony of Mr. Phillip Smalling, Byrdstown City Attorney).

Mr. Smalling stated that in the event of approval of the franchise, the Town will propose to purchase the old existing lines from the current owner, with the purchasers being Gasco or the Town separately or jointly.²⁷ Mr. Smalling stated that Byrdstown will attempt to purchase the old system from a company in Texas but may resort to a tax sale,²⁸ although some resolution will have to be reached with the county because there are delinquent county as well as city taxes.²⁹ Mr. Smalling stated that the Chancery Court ruled that the earlier gas franchise was null and void but recognized that a partner in Texas has an ownership interest at the present time, subject to the taxes owed to the Town and the County.³⁰ The Ordinance contains a provision that allows the Town to terminate the franchise in the event that Gasco does not pay its taxes in a timely manner.³¹

Applicable Statutes

Relying on Tenn. Code Ann. § 65-4-107, the Petition seeks Authority approval of the privilege or franchise granted to Gasco by the Byrdstown Ordinance. Tenn. Code Ann. § 65-4-107 provides that no grant of a privilege or franchise from the State or a political subdivision of the State to a public utility shall be valid until approved by the Authority. Approval pursuant to Tenn. Code Ann. § 65-4-107 requires a determination by the Authority, after hearing, that “such privilege or franchise is necessary and proper for the public convenience and properly conserves the public interest.”³² Tenn. Code Ann. § 65-4-107 further provides that in considering such privilege or franchise, the Authority “shall have the power, if it so approves, to impose

²⁷ *Id.*, at p. 61.

²⁸ *Id.*, at pp. 50-51.

²⁹ *Id.*, at p. 51.

³⁰ *Id.*, at p. 62. *See also*, Late-Filed Exhibits, copies of Chancery Court orders, filed by Byrdstown on April 23, 2001.

³¹ *Id.*, at p. 62.

³² Tenn. Code Ann. § 65-4-107.

conditions as to construction, equipment, maintenance, service or operation as the public convenience and interest may reasonably require . . .”³³

A privilege or franchise granted by the State or a political subdivision thereof to a public utility is not valid until approved by the Authority, after a hearing and a determination of the public convenience and necessity and the public interest. Notwithstanding the assertion in the Petition that the public interest will be served, the Authority must still make its own determination of the public interest. Further, the Byrdstown Ordinance does not contain a statement of public necessity or public interest.

The franchise granted to Gasco, as set forth in the Byrdstown Ordinance, provides that Gasco will pay a franchise fee of up to two percent (2%) of the natural gas sales from Gasco customers located within the franchise area granted by the Town. Tenn. Code Ann. § 65-4-105(e) provides:

Any franchise payment or other payment for the use of public streets alleys or other public places or any license, privilege, occupation or excise tax payment, which after February 24, 1961, may be made by a utility to a municipality or other political subdivision, except such taxes as are presently provided for under existing statutes and except such franchise payment or other payments as are presently exacted from the utility pursuant to the terms of any existing franchise or other agreement, shall, insofar as practicable, be billed pro rata to the utility customers receiving local service within the municipality or political subdivision receiving such payments, and shall not otherwise be considered by the authority in fixing the rates and charges of the utility.³⁴

Findings of Fact and Conclusions of Law

After reviewing the record in this case, considering the testimony of the witnesses, and applying the appropriate statutes to the facts, the Hearing Officer makes the following findings of fact and conclusions of law:

³³ Tenn. Code Ann. § 65-4-107.

³⁴ Tenn. Code Ann. § 65-4-105(e).

1. While approval of the franchise granted to Gasco by Byrdstown is required, a CCN is not required for the construction of the pipeline or the provision of service by Gasco to the Town of Byrdstown. By the Authority's orders of June 12, 1997, Gasco has already obtained a CCN for Pickett County and approval of a franchise granted to Gasco by Pickett County. The Order approving the Pickett County franchise expressly did not include Byrdstown as within the franchise agreement. Gasco has complied with the Authority's Order of June 12, 1997 by filing a separate petition for approval of the Byrdstown Ordinance and franchise.

2. The Petitioner has made a sufficient showing that the franchise granted to Gasco by the Town of Byrdstown is "necessary and proper for the public convenience and properly conserves the public interest" pursuant to Tenn. Code Ann. § 65-4-107.

Gasco and Byrdstown have provided testimony and documentation which demonstrates the beneficial nature of the proposed service to the residents of Byrdstown as follows:

- (a) Residents of Byrdstown currently use propane as their source of heating fuel.
- (b) Propane has been an extremely expensive source of fuel and, at times, has not been readily available to residents when supplies have been low or delivery has been hindered for reasons such as adverse weather conditions.
- (c) A significant number of residents have expressed an interest in changing from propane to natural gas as a source of heating fuel.
- (d) Gasco has demonstrated a reliable presence in the Byrdstown area, having provided natural gas service to industrial plants in Pickett County.
- (e) The Town of Byrdstown has concluded that Gasco has the capability and experience to provide natural gas service to the residents of Byrdstown.

(f) The provision of natural gas to the residents of Byrdstown will result in a more reliable, less expensive source of fuel.

(g) Gasco has demonstrated a reasonable plan for providing natural gas service to the residents of Byrdstown, including the possibility of utilizing parts of the existing abandoned gas system, after the proper testing, so as to avoid the additional expense and inconvenience of laying new lines. There were no intervenors in this case, therefore there is no opposition to Gasco's proposed pipeline construction or service to the residents of Byrdstown.

(h) Gasco has represented that it has the means and capacity to provide natural gas to the residents of Byrdstown and the ability to maintain the system. Further, Gasco has represented that it will comply with all rules and regulations of the Tennessee Regulatory Authority, including those rules pertaining to the minimum federal safety requirements.

(i) The franchise ordinance provides that Gasco will receive an exclusive franchise to supply natural gas service in the Town of Byrdstown for twenty (20) years, with automatic renewals consisting of twenty (20) year terms. The franchise ordinance sets forth conditions whereby the Town of Byrdstown may terminate the franchise granted to Gasco if Gasco fails to perform, and it also provides for situations under which the Town could obtain ownership of the natural gas system if deemed abandoned by Gasco.³⁵

3. The franchise ordinance provides that Gasco shall pay to Byrdstown a surcharge (franchise fee) of up to two percent (2%) of the natural gas sales exclusive of taxes and other charges from any customer of Gasco located within the franchise area granted by Byrdstown. Gasco shall include the franchise fee as a separate line item on each customer's bill in

³⁵ Such provisions may prevent the situation which Byrdstown recently faced when a franchisee failed to pay real and personal property taxes and abandoned its gas system.

compliance with Tenn. Code Ann. § 65-4-105(e). Although the proposed franchise fee does not appear to be prohibited on the basis of Tenn. Code Ann. § 65-4-105(e) or any other Tennessee statute, the Authority can and should scrutinize the fee under the standards contained in Tenn. Code Ann. § 65-4-107 as a part of the Authority's determination of whether the franchise itself "properly conserves the public interest." In this instance, the proposed franchise fee is in compliance with Tenn. Code Ann. § 65-4-105(e) and is not so excessive as to render the franchise contrary to the public interest. In addition, the evidence indicates that Byrdstown may choose to impose a franchise fee lower than two percent (2%).

4. Based upon the testimony presented by Gasco and the Town of Byrdstown, Section 14 of the franchise ordinance is amended such that compliance therewith can be demonstrated by showing availability of gas to one hundred percent (100%) of the residents of Byrdstown who have requested gas service.

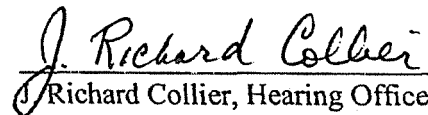
Based upon the foregoing findings and conclusions,

IT IS THEREFORE ORDERED THAT:


1. The Ordinance of the Town of Byrdstown, (No. 00-2), as amended herein and attached to this Order as Exhibit A, is hereby approved and is incorporated in this Order as if fully rewritten herein.
2. The franchise granted to Gasco Distribution Systems, Inc. by the Town of Byrdstown, as embodied in the Byrdstown Ordinance, as amended, is hereby approved.
3. Any party aggrieved by the decision of the Hearing Officer in this matter may file a Petition for Reconsideration with the Hearing Officer within fifteen (15) days from the date of this Order.

4. Any party aggrieved by the decision of the Hearing Officer in this matter may file a Petition for Appeal with the Tennessee Regulatory Authority within fifteen (15) days from the date of this Order.

5. In the event this Order is not appealed to the Directors of the Tennessee Regulatory Authority within fifteen (15) days, this Order shall become final and shall be effective from the date of entry. Within sixty (60) days from the date of this Order, any party aggrieved by the decision of the Hearing Officer may file a Petition for Review in the Middle Section of the Tennessee Court of Appeals.


Richard Collier, Hearing Officer

ATTEST:


K. David Waddell, Executive Secretary



ORDINANCE

00-2

AN ORDINANCE GRANTING A FRANCHISE TO GASCO DISTRIBUTION SYSTEMS, INC., ITS SUCCESSORS AND ASSIGNS, TO OPERATE AND MAINTAIN A GAS SYSTEM IN THE TOWN OF BYRDSTOWN, TENNESSEE. INCLUDING A SYSTEM OF GAS MAINS AND SERVICE PIPES FOR THE PURPOSE OF TRANSMITTING AND DISTRIBUTING GAS IN, UPON, ACROSS, ALONG AND UNDER THE HIGHWAYS, STREETS, AVENUES, ROADS, ALLEYS, LANES, WAYS, UTILITY EASEMENTS, PARKWAYS AND OTHER PUBLIC GROUND OF THE TOWN OF BYRDSTOWN, TENNESSEE.

BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE TOWN OF BYRDSTOWN, TENNESSEE, as follows:

SECTION 1. This Ordinance shall be known and may be cited as the "BYRDSTOWN NATURAL GAS FRANCHISE ORDINANCE OF 2000".

SECTION 2. For the purpose of this Ordinance, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present terms include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- (1) "TOWN" is the Town of Byrdstown, Tennessee, a municipal corporation;

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- (2) "COMPANY" is Gasco Distribution Systems, Inc., the grantee of the rights under this franchise, a corporation, domesticated for the purpose of doing business within the State of Ohio, with its principal place of business at 4435 East Pike, Zanesville, Ohio 43701.
- (3) "PERSON" is any person, firm, partnership, association, corporation, company or organization of any kind.

SECTION 3. There is hereby granted by the Town of Byrdstown, Tennessee, to Gasco Distribution Systems, Inc., its successors and assigns, the exclusive right, authority, privilege and franchise to erect, construct, operate and maintain a system of gas mains, service pipes, regulator all other necessary and appropriate equipment and facilities for the transmission and distribution of gas in, upon, across, along and under the highways, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways and other public grounds in the present or future corporation limits of the Town of Byrdstown and in the environs of said Town, and to import, transport, sell and distribute gas, whether natural, manufactured, or mixed, within the Town and its environs, for the supplying and selling of said gas to said Town, and the inhabitants, institutions, and businesses thereof; and for such purposes to construct, operate, maintain, renew, replace, repair, and extend all necessary gas mains, service pipes and other appliances, fixtures, and facilities as may be necessary for said

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purposes, to-wit: the transmission, distribution and sale of such gas to said Town and the inhabitants thereof, for domestic, commercial, industrial and institutional uses, and such other purposes for which it is or may hereafter be used.

SECTION 4. This franchise and the rights herein granted shall take effect and be enforced from and after the effective date hereof, as required by law, and upon the filing of acceptance by the Company and approval by the TRA, and shall continue in force and effect for a term of twenty (20) years after the effective date. The franchise shall automatically continue for consecutive twenty (20) year terms unless terminated by either the Town or the Company pursuant to this Section. The Company has the right to terminate the franchise effective at the end of any term by providing written notice to the Town at least one (1) year prior to the end of that term. The Town has the right to terminate the franchise only for "Just Cause", at the end of any term by providing written notice to the Company at least one (1) year prior to the end of that term, specifying the reasons constituting "Just Cause". For purposes of this Section 4, "Just Cause" shall mean the Company's material failure to: (i) provide a safe and adequate service to its customers in the Town; or (ii) the Company's failure to comply with the terms of this ordinance. Company has the right to contest the determination of "Just Cause" before any legal forum having jurisdiction. If contested, the determination shall not take effect until approved by a legal forum having jurisdiction.

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SECTION 5. All gas mains, service pipes, fixtures, facilities and other appliances laid, constructed, maintained and operated by virtue of this franchise shall be laid, constructed, maintained and operated in accordance with acceptable engineering practices and in full accord with any and all applicable engineering codes and safety codes adopted or approved by the natural gas distribution industry and/or engineering profession and in accordance with any applicable Statutes of the State of Tennessee, Ordinances of the Town of Byrdstown and the Rules and Regulations of the Tennessee Regulatory Authority or any other governmental regulatory commission, board or agency having jurisdiction over the Company. Said facilities shall be so construed as not to interfere with the drainage of said Town, or interfere with or injure any street, sewer or other public improvement which said Town has heretofore made or may hereafter make in, upon, across, along or under any highway, street, avenue, road, alley, lane, way, utility easement, parkway or other public grounds, or unnecessarily obstruct or impede such highway, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways, or other public grounds of said Town. Company shall provide detailed maps, descriptions or other documents necessary for the Town officials to locate and/or be aware of the location of all gas lines, equipment and distribution system facilities.

SECTION 6. When the highways, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways or other

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public grounds are opened or any other opening is made by the Company within the Town, whether the same be made for the purpose of laying, constructing, replacing or repairing the mains, pipes and other appliances and fixtures of said Company, said Company shall place and maintain all necessary safety devices, barriers, lights and warnings to properly notify all persons of any dangers resulting from such entrances, and shall comply with all safety regulations required by federal, state or local laws.

SECTION 7. In the event that any time during the period of this franchise the Town shall lawfully elect to alter, or change the grade of, any street, alley or other public ways in which the Company is maintaining gas mains, pipes or other appliances and fixtures, the Company, upon reasonable written notice by the Town, shall remove, or change or relocate its mains, pipes, or other appliances and fixtures as necessary to conform to the proposed alteration. However, the Company shall be reimbursed its relocation costs whenever such reimbursement is authorized by a Federal or State statute, for either urban renewal development or street relocation.

SECTION 8. When any highway, street, avenue, road, alley, lane, way, utility easement, parkway or other public ground is entered by the Company, the Company shall, within a reasonable time, restore the same to its former condition as nearly as practicable in such a manner as to meet the approval of the Town's

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Consulting Engineer, Codes Inspector, or other responsible agent of the Town, provided, however, that such approval shall not be unreasonably withheld. In the event the Company shall fail to restore said streets, avenues, roads, alleys, lanes, ways, utility easements, parkways, or other public grounds to their former state, as nearly as practicable, the Town may itself, after giving the Company reasonable written notice, make restoration and charge the costs thereof to the Company.

SECTION 9. The Company shall, at all times, defend, indemnify and hold the Town and its Mayor, Recorder and Board of Aldermen, in their official and individual capacities, harmless from and against any and all claims for injury to any person or property by reason of the failure of the Company or its employees to exercise due care and diligence in and about the installing and maintenance of said system, guarding trenches and excavations while said system is being installed or subsequent extensions, repairs, or alterations are being made or generally in the day to day operation and maintenance of said system, provided the Company shall have been notified in writing of any claim against the Town on account thereof, and shall have been afforded the opportunity fully to defend the same. Company further agrees that it will maintain liability insurance coverage in an amount of not less than FIVE MILLION (\$5,000,000.00) DOLLARS for personal injuries and not less than FIVE MILLION (\$5,000,000.00) DOLLARS for property damage. Company shall provide verification of such insurance coverages upon

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request. The indemnification of Town and its officers by the Company for any claims, demands, suits, actions or judgments related to installation, maintenance or day to day operation of the utility system shall also include any reasonable attorneys fees and direct costs incurred by Town.

SECTION 10. The Town and the Company hereby agree that this Ordinance shall, from time to time, be subject to Rules and Regulations adopted by the Company and approved by the Tennessee Regulatory Authority or any other regulatory body having jurisdiction thereof during the term of this franchise, and shall also be subject to all Rules and Regulations adopted and approved by the Tennessee Regulatory Authority itself; and that all such Rules and Regulations shall be and become part of this Ordinance to the same extent and with the same effect as if said Rules and Regulations were herein set forth in full. The Company shall not be obligated or required to make any extension of distribution mains, except in accordance with the provisions relating thereto adopted or approved by the Tennessee Regulatory Authority.

SECTION 11. Nothing contained herein shall be construed as preventing the Company from installing, placing, replacing, taking up, repairing or removing gas pipes, mains, service pipes or other devices for furnishing gas service, from using any easements for gas service which are shown on any plat or plats or any portion of the Town heretofore or hereafter platted or

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recorded, or any easement which may hereafter be created, granted or dedicated for any such utility purposes by any person, firm or corporation whatsoever.

SECTION 12. The Company shall not assign, sell or transfer the rights granted by this Ordinance without the approval of the Tennessee Regulatory Authority. Even if granted, no sale or transfer of the gas plant or system, or the transfer or any rights under this franchise shall be effective until the vendee, assignee or lessee has filed in the Office of the Town Recorder as instrument, duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of this franchise, and agreeing to perform all the conditions thereof.

SECTION 13. Subject to approval by the Tennessee Regulatory Authority, the Town shall bill a surcharge up to two percent (2%) of the natural gas sales exclusive of taxes and other charges from any customer of Gasco Distribution Systems, Inc. located within the franchise area granted by the Town. The Company shall include said surcharge as a separate item on its bills to its customers in the Town and shall pay said amount received from its customers to the Town within twenty-one (21) days after receipt. Interest on any unpaid amounts due will accrue after the due date at the rate of eight percent (8%). The Town shall be permitted to audit or inspect records of Company for compliance with this provision or any other provision of this franchise document.

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SECTION 14. The Company and Town acknowledge that the franchise can be terminated by the Town for the following reasons:

- a. The Company fails to comply with any term or condition of the Ordinance and fails to cure the failure within ninety (90) days, after notice of the failure.
- b. The Company fails to remit franchise fees collected from customers for a period of ninety (90) days.
- c. The Company fails to use reasonable diligence in making natural gas available to all residents of the Town. Reasonable diligence requires availability to at least sixty percent (60%) of the Town residents within twenty-four (24) months of the granting of this franchise. Reasonable diligence requires availability to ninety percent (90%) of the Town residents within forty-eight (48) months of granting the franchise, and availability to one-hundred percent (100%) of the Town's residents within seventy-two (72) months. For purposes of this section, Town shall mean the political boundaries of the Town on the date of the enactment of this Ordinance.
- d. Ninety (90) days after written notice the Company fails to timely pay real estate and personal property taxes assessed by the Town or Pickett County. Provided, however, no special tax or tax rate shall be imposed upon the Company by the Town. To the extent permitted by law, the Company shall not be assessed any taxes for improvements until they are placed into service.
- e. The Company ceases to operate the utility for more than ninety (90) continuous days or ceases to operate the system in a manner that provides residents with a reliable source of natural gas and fails to cure the failure within ninety (90) days after written notice.

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- f. The Company voluntarily ceases service to the Town without TRA approval.

SECTION 15. In the event Company ceases to operate the utility for more than ninety (90) continuous days or in the event the authority to operate the utility is revoked or terminated by the Tennessee Regulatory Authority or in the event the franchise is terminated by the Town, then and in that event, the Company shall have the option, but not the obligation to ~~re~~convey the natural gas system to the Town for the Fair Market Value of the system as determined by the American Arbitration Association. The Town shall have ninety (90) days to accept or reject the conveyance of the system for fair market value.

SECTION 16. If any section or portion of any section of this Ordinance shall hereafter be declared or determined by a court of competent jurisdiction to be invalid, the Company, at its election (to be given to the Town by notice in writing within thirty (30) days after any such declaration or determination) may ratify or confirm the remaining portions of this Ordinance and upon such ratification or confirmation the remaining portions of this Ordinance shall remain in full force and effect.

SECTION 17. The Company shall, within thirty (30) days after the passage of this Ordinance, file with the Town Recorder of

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the Town of Byrdstown its unconditional acceptance of the terms and conditions of this Ordinance signed by its President and, after the filing of such acceptance, this Ordinance shall constitute a contract between the parties hereto and shall (subject to the rights and powers vested in and Orders lawfully issued by the Tennessee Regulatory Authority or such other regulatory body of the State of Tennessee as may hereafter succeed to the rights and powers of the Tennessee Regulatory Authority) be the measure of the rights, powers, obligations, privileges and liabilities of the Town and of the Company.

SECTION 18. All the privileges given and obligations created by this Ordinance shall be binding upon the successors and assigns of the Company subject to the provisions of Section 12 on assignments.

SECTION 19. Company shall be responsible for obtaining all necessary approvals for the operation of the gas utility from the Tennessee Regulatory Authority or any other regulatory agency. Town agrees to cooperate to the extent reasonable and necessary for obtaining same.

SECTION 20. In the event this franchise terminates for just cause, Company shall remove all lines, equipment or distribution system existing on or in Town owned properties and rights-of-way if required to do so by the Town. The Company shall

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be permitted one-hundred and twenty (120) days to perform removal. In the event removal does not occur, any lines, equipment or system will be considered to be abandoned.

SECTION 21. All notices required hereunder shall be delivered or mailed to the following official addresses:

GASCO DISTRIBUTION SYSTEMS, INC.
4435 EAST PIKE
ZANESVILLE, OHIO 43701

TOWN OF BYRDSTOWN
ATTN: MAYOR AND ALDERMEN
P.O BOX 325
109 WEST MAIN STREET
BYRDSTOWN, TENNESSEE 38549

SECTION 22. This Ordinance is subject to the approval of the Tennessee Regulatory Authority. This franchise shall take effect immediately, the public welfare so requiring it.

TOWN OF BYRDSTOWN, TENNESSEE

BY: Paul Jordan, Mayor
PAUL JORDAN, MAYOR

ATTEST:

Glenn Dennis

TOWN RECORDER

Passed First Reading: 10-30-00

Passed Second Reading: 11-13-00

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BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

June 12, 1997

IN RE: PETITION OF GASCO DISTRIBUTION)
 SYSTEMS, INC. TO APPROVE PICKETT) Docket No.
 COUNTY FRANCHISE) 97-00385

ORDER APPROVING PICKETT COUNTY FRANCHISE

This matter is before the Tennessee Regulatory Authority ("Authority") upon the petition of Gasco Distribution Systems, Inc. ("Gasco") to approve, pursuant to Tenn. Code Ann. § 65-4-107, a franchise issued by Pickett County, Tennessee to Gasco.¹ A copy of an "Agreement" between Gasco and Pickett County is appended to this Order and is incorporated herein by reference. The Agreement contains, among other things, the terms of Gasco's franchise. There are no other parties to the proceeding.

The Authority considered the petition at a regularly scheduled Authority Conference held on April 15, 1997, and voted at that time to approve the petition as requested. In support of that decision, and based on the record before the agency, the Authority makes the following findings of fact and conclusions of law:

¹ See also Petition of Gasco Distribution Systems, Inc. for Approval of Special Contract, Docket No. 97-00386 and Petition of Gasco Distribution Systems, Inc. to Amend Its Certificate of Convenience and Necessity, Docket No. 97-00417.

The petition states that Pickett County has received a grant from the Tennessee Department of Economic and Community Development for \$365,000 to extend natural gas service to a new industrial customer. Gasco will purchase this extension from the county at cost, without interest, over a thirty-year period (30 year period) beginning in the eleventh year (11th year) of operation. The franchise agreement calls for Pickett County to receive a franchise fee equal to two percent (2%) of the net natural gas sales in the area. In return, Gasco will receive an exclusive franchise to supply natural gas service in Pickett County, not including the City of Byrdstown², for forty (40) years. Both Gasco and Pickett County represent that approval of this franchise will serve the public interest by bringing gas service, new industry, and jobs to Pickett County.

For these reasons, the Authority finds that approval of this franchise is "necessary and proper for the public convenience and properly conserves the public interest," (see Tenn. Code Ann. § 65-4-107), and therefore finds that the franchise should be approved as filed.

IT IS THEREFORE ORDERED:

1. The franchise agreement awarded by Pickett County to Gasco is hereby approved.
2. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration within ten (10) days from entry of this Order.

² Gasco plans to file a separate franchise agreement with the City of Byrdstown at a later date.

3. Any person aggrieved by the Authority's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from entry of this Order.

Lynn Greer / PMA
CHAIRMAN

[Signature]
DIRECTOR

[Signature]
DIRECTOR

ATTEST:

K. David Waddell
EXECUTIVE SECRETARY *By JB*

AGREEMENT

This Agreement, made this 22nd day of February, 1997, is between Pickett County, Tennessee, a body politic, (hereinafter referred to as "Pickett County"), and Gasco Distribution Systems, Inc, a corporation whose principal office is 4435 East Pike, Zanesville, Ohio 43701, (hereinafter referred to as "Gasco").

WHEREAS, Pickett County has recently attracted Hutchinson, a French corporation, to locate an industrial plant (the "Industrial Plant") in Pickett County; and

WHEREAS, Hutchinson has advised Pickett County that it will need a reliable natural gas supply for the Industrial Plant; and

WHEREAS, Pickett County does not have a natural gas distribution system adjacent to the Industrial Plant; and

WHEREAS, a subsidiary of Gasco has a natural gas pipeline known as B&W Pipeline which runs through the Parker and Etter communities in Pickett County, Tennessee; and

WHEREAS, the B&W Pipeline is approximately five (5) miles from the Industrial Plant and an extension off said B&W Pipeline (the "Pipeline Extension") could be made to provide natural gas service to the Industrial Plant; and

WHEREAS, it would not be economically feasible for Gasco to bear the initial expense of making the Pipeline Extension and revisions to the B&W Pipeline to provide natural gas service to the Industrial Plant; and

WHEREAS, Pickett County is willing to bear the initial expense of making the Pipeline Extension; and

WHEREAS, Gasco is willing to purchase the Pipeline Extension from Pickett County, after it is constructed, on the terms and conditions provided herein; and

NOW THEREFORE, in mutual consideration of the covenants and agreements herein, and intending to be legally bound by the terms of this Agreement, Pickett County and Gasco agree as follows:

1. Pickett County will apply for a TIIPS Grant through the Tennessee Department of Economic and Community Development ("TDECD") for funding for the Pipeline Extension from the B&W Pipeline owned by Gasco to the Industrial Plant for delivery of the natural gas volumes required by Hutchinson.

2. Pickett County, in applying for the grant, will seek an amount to pay for all of the costs associated with the Pipeline Extension; including but not limited to materials, reduction stations, odorization units, metering stations, telemetering equipment, desiccant dryers, installation, rights of way, engineering, inspection and testing. Gasco shall not be responsible for any of the initial costs associated with the Pipeline Extension, except as provided in Paragraph 3 herein, and except for costs in excess of the TIIPS Grant or \$365,000, whichever is greater.

3. Gasco agrees that it will supply, at its own expense, technical assistance for the design and construction of the Pipeline Extension, and related facilities. Pickett County agrees that said Pipeline Extension and related facilities will meet the minimum standards established by Gasco, all being subject to the bidding and purchase laws of the State of Tennessee and as may be required by TDEC.

4. Pickett County and or its agents and contractors shall be responsible for applying for and obtaining all permits and other approvals necessary for the construction of the Pipeline Extension. Gasco shall cooperate to the extent reasonable and necessary for obtaining same.

5. Gasco shall be responsible for obtaining all necessary approvals for the operation of the Pipeline Extension, including the approval of the Tennessee Regulatory Authority (the "TRA"). Pickett County shall cooperate to the extent reasonable and necessary for obtaining same.

6. When the Pipeline Extension has been constructed and is ready to be placed into service, Pickett County shall sell the Pipeline Extension to Gasco and Gasco shall purchase the Pipeline Extension from Pickett County on the following terms and conditions:

- a. The purchase price shall be equal to the actual cost of the Pipeline Extension, not to exceed \$365,000 (the "Purchase Price").
- b. Annual payments toward the Purchase Price shall commence on the eleventh (11th) year after the date of purchase.
- c. For each of years eleven (11) through forty (40) Gasco shall pay to Pickett County, without interest, one-thirtieth (1/30th) of the Purchase Price or until the Purchase Price is paid in full.
- d. For any year in which Hutchinson or any other customers of Gasco connected to the Pipeline Extension in the franchise area does not purchase the Minimum Amount of Natural Gas, as defined herein, from Gasco through the Pipeline Extension, no payment shall be due or payable from Gasco toward the Purchase Price. For purposes of this Agreement the phrase "Minimum Amount of Natural Gas" shall mean 8,000 MCF per month and 96,000 MCF per year.

e. Subject to approval by the TRA Pickett County shall bill a surcharge up to two percent (2%) of the natural gas sales exclusive of taxes and other charges from any customer of Gasco located in the franchise area granted by Pickett County. Gasco shall include said surcharge as a separate item on its bills to its customers in Pickett County and shall pay said amount received from its customers to Pickett County twenty-one (21) days after receipt.

7. Gasco shall have the exclusive right to provide natural gas service through the Pipeline Extension to customers other than and in addition to Hutchinson.

8. Pickett County shall grant Gasco an exclusive franchise to supply natural gas service in Pickett County, not including the City of Byrdstown, for a period of forty (40) years. Said franchise shall become void if Gasco shall have no customers served from the Pipeline Extension for any twelve (12) consecutive months after the Pipeline Extension has been acquired by Gasco.

9. In the event Gasco's exclusive franchise shall become void, Gasco shall have the option, but not the obligation,

to reconvey the Pipeline Extension to Pickett County for consideration equal to the payments, if any, Gasco has made to Pickett County toward payment of the Purchase Price.

10. This Agreement shall be binding upon the parties hereto, their successors and assigns.

11. This Agreement is contingent upon the approval of its terms by the TRA, the TDECD, the Tennessee Department of Transportation, and the Pickett County Board of Commissioners. If any of said parties refuse to grant approval, then this contract shall become void.

12. This Agreement shall not be assigned or amended without the written consent of each of the parties hereto. Except, however, that subject to the approval of the TRA, Gasco is permitted to assign this Agreement to another public utility.

13. Pickett County shall have a security interest in the Pipeline Extension until such time as it has been paid in full by Gasco for the Purchase Price of the Pipeline Extension.

Attest:

PICKETT COUNTY TENNESSEE

by: Cletis Beason

Cletis Beason
County Clerk

by: Kelly Keisling

Kelly Keisling
County Executive

Attest:

GASCO DISTRIBUTION
SYSTEMS, INC.

by: Fred A. Steels

Secretary

by: Charles D. Hercher

Charles D. Hercher
Vice President of Operations

ORDINANCE NO. 10 OF 1993

AN ORDINANCE AUTHORIZING THE TRANSFER OF THE FRANCHISE AGREEMENT TO OPERATE AND MAINTAIN A GAS SYSTEM IN THE CITY OF JELLYCO FROM KEN-GAS OF TENNESSEE, INC. TO GASCO DISTRIBUTION SYSTEMS, INC.

WHEREAS, the City of Jellico, Tennessee granted a Franchise to Ken-Gas of Tennessee, Inc., its successors and assigns, of October 15, 1987; and

WHEREAS, Ken-Gas of Tennessee, Inc. has gone out of business and is no longer operating the gas utility service in the City of Jellico; and

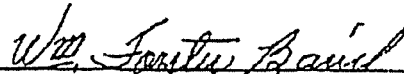
WHEREAS, Gasco Distribution Systems, Inc. is now the assignee of Ken-Gas of Tennessee, Inc.; and

WHEREAS, Gasco Distribution Systems, Inc. intends to pledge and transfer its rights under the franchise to the Small Business Administration as collateral security for credit;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF JELLYCO:

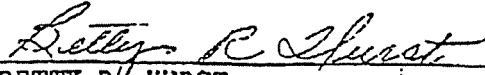
That the Franchise granted to Ken-Gas of Tennessee, Inc. on October 15, 1987, to operate and maintain a gas system in the City of Jellico, Tennessee, is hereby transferred, assigned and granted to Gasco Distribution Systems, Inc. The Mayor and the City Recorder are hereby authorized to sign the Collateral Assignment of Natural Gas Franchise Agreement on behalf of the City of Jellico.

This Ordinance shall take effect immediately upon its final passage, the public welfare requiring it.



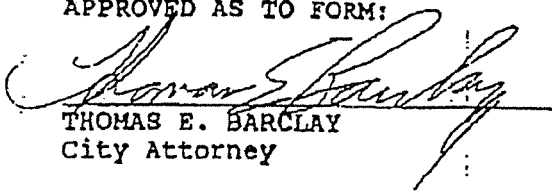
WM. FORSTER BAIRD
Mayor

ATTEST:



BETTY R. HURST
City Recorder

APPROVED AS TO FORM:



THOMAS E. BARCLAY
City Attorney

Passed Second Reading:

1-6-94

Passed Third Reading:

2-17-94

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
Nashville, Tennessee
DECEMBER 8, 1993

IN RE: PETITION OF GASCO DISTRIBUTION SYSTEMS OF TENNESSEE, INC.
FOR APPROVAL OF TRANSFER OF AUTHORITY TO PROVIDE UTILITY
SERVICES AND OF PLANT AND FACILITIES FROM JELICO GAS
UTILITY, INC., TO GASCO DISTRIBUTION SYSTEMS OF
TENNESSEE, INC.

DOCKET NO. 93-07841 (76656)

O R D E R

This matter is before the Tennessee Public Service Commission upon the petition of Gasco Distribution Systems of Tennessee, Inc. ("Gasco") for approval of the transfer of the certificate of convenience and necessity for the operation of a natural gas distribution system for Jellico, Tennessee from Jellico Gas Utility, Inc. to Gasco. This matter was heard on November 9, 1993 before Mack H. Cherry, Administrative Judge. On December 2, 1993 the Administrative Judge issued his Initial Order recommending that the transfer be approved.

The Commission considered this matter at its regularly scheduled Commission Conference held on December 7, 1993. It was concluded after careful consideration of the entire record including the Administrative Judge's Initial Order that the Administrative Judge's Initial Order should be approved. The Commission further ratifies and adopts the findings and conclusions of the Administrative Judge as its own.

IT IS THEREFORE ORDERED:

1. That the Administrative Judge's Initial Order dated

December 2, 1993 in this docket is hereby ratified, adopted and incorporated by reference in this order as fully as though copied verbatim herein, including the findings and conclusions of the Administrative Judge which the Commission adopts as its own.

2. That the petition to transfer the certificate of convenience and necessity for the operation of a natural gas distribution system in and around the area of Jellico, Tennessee from Jellico Gas Utility to Gasco Distribution Systems of Tennessee, Inc. is hereby approved.

3. That the value of the assets acquired by GASCO Distribution Systems, Inc. is to be recorded on its books and records in accordance with the requirements of the Uniform System of Accounts for Gas Utilities.

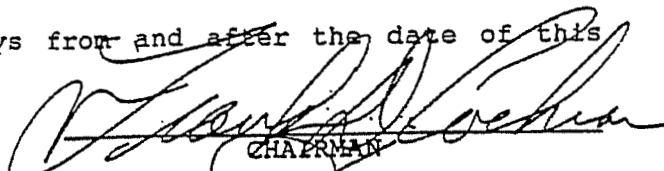
4. That Gasco Distribution Systems, Inc. shall adopt the rates currently in effect for Jellico Gas Utility and file new tariffs reflecting the new company name.

5. That Gasco Distribution System, of Tennessee shall diligently comply with the rules and regulations of the Tennessee Public Service Commission regarding natural gas distribution utilities.

6. That any party aggrieved with the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within ten (10) days from and after the date of this Order; and

7. That any party aggrieved with the Commission's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle

Section, within sixty (60) days from and after the date of this
Order.


CHAIRMAN


COMMISSIONER


COMMISSIONER

ATTEST:

EXECUTIVE DIRECTOR

RECEIVED

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
NASHVILLE, TENNESSEE
February 8, 1990

IN RE: PETITION OF KEN-GAS OF TENNESSEE, INC. FOR APPROVAL OF A TRANSFER
OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR CONSTRUCTION
AND OPERATION OF A NATURAL GAS DISTRIBUTION UTILITY TO JELICO GAS
UTILITY, INC.

DOCKET NO. 89-02042

ORDER

This matter is before the Tennessee Public Service Commission upon the petition of Ken-Gas of Tennessee, Inc. for approval of the transfer of its certificate of convenience and necessity to operate a natural gas distribution system in Jellico, Tennessee, to Jellico Gas Utility, Inc. This matter was heard on May 17, 1989 in Nashville, Tennessee, before Ralph B. Christian, II, Administrative Judge. On January 8, 1990, the Administrative Judge issued his Initial Order recommending that the transfer be approved.

The Commission considered this matter at its regularly scheduled Commission Conference held on January 30, 1990. It was concluded after careful consideration of the entire record, including the Administrative Judge's Initial Order and applicable laws and statutes, that the Administrative Judge's Initial Order should be approved and the transfer granted.

The Commission further ratifies and adopts the findings and conclusions of the Administrative Judge as its own.

IT IS THEREFORE ORDERED:

1. That the Administrative Judge's Initial Order dated January 8, 1990, in this docket is hereby ratified, adopted and incorporated by reference in this Order as fully as though copied verbatim herein, including the findings and conclusions of the Administrative Judge which the Commission adopts as its own.

2. That the petition to transfer the certificate of public convenience and necessity for the construction and operation of a natural gas distribution system from Ken-Gas of Tennessee, Inc. to Jellico Gas Utility, Inc. is hereby approved.

3. That the value of the assets acquired by Jellico Gas Utility, Inc. be recorded on its books and records for rate making purposes at the same value as presently shown on the books and records of Ken-Gas of Tennessee, Inc.

4. That the tariffs on file with the Commission for Ken-Gas shall remain in effect for Jellico Gas Utility, Inc.

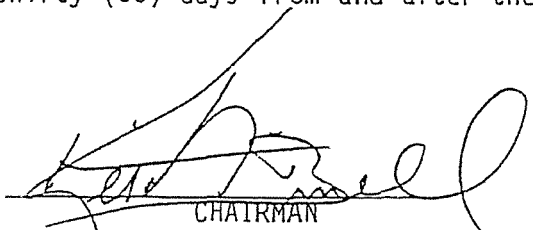

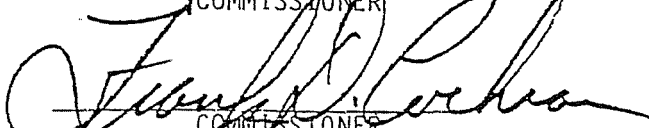
5. That Jellico Gas Utility, Inc. diligently comply with the rules and regulations of the Tennessee Public Service Commission regarding natural gas distribution utilities.

6. That any party aggrieved with the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within ten (10) days from and after the date of this Order.

7. That any party aggrieved with the Commission in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within thirty (30) days from and after the date of this Order.

ATTEST


EXECUTIVE DIRECTOR


CHAIRMAN

COMMISSIONER

COMMISSIONER

TENNESSEE PUBLIC SERVICE COMMISSION
460 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243-0505

KEITH BISSELL, CHAIRMAN
STEVE HEWLETT, COMMISSIONER
FRANK COCHRAN, COMMISSIONER



PAUL ALLEN, EXECUTIVE DIRECTOR
HENRY M. WALKER, GENERAL COUNSEL

RECEIVED
JAN 9 1990

January 8, 1990

Mr. David Cross
Attorney at Law
P.O. Box 370
Albany, Kentucky 42606

RE: KEN-GAS OF TENNESSEE, INC.
89-02042

Dear Mr. Cross:

I have enclosed a copy of the Initial Order of the Administrative Judge in this case noted above.

The Commission will review all of the issues addressed by the judge in his decision and they will provide all parties an opportunity to express their opinion of the findings of the judge.

Enclosed is a copy of the order setting the matter for review. This order does not affect your right to request reconsideration of the initial order of the Administrative Judge.

Sincerely,

PAUL ALLEN
EXECUTIVE DIRECTOR

ah

OFFICIAL FILE
TENNESSEE PUBLIC SERVICE COMM.
ACCOUNTING

PLEASE

DO NOT REMOVE

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
Nashville, Tennessee
January 8, 1990

IN RE: PETITION OF KEN-GAS OF TENNESSEE, INC., FOR APPROVAL
OF A TRANSFER OF ITS CERTIFICATE OF CONVENIENCE AND
NECESSITY FOR CONSTRUCTION AND OPERATION OF A
NATURAL GAS DISTRIBUTION UTILITY TO JELLIKO GAS
UTILITY, INC.

DOCKET NO. 89-02042

INITIAL ORDER

This matter is before the Tennessee Public Service Commission upon the petition filed December 27, 1988, by Ken-Gas of Tennessee, Inc., for approval of the transfer of its certificate of convenience and necessity for the construction and operation of a natural gas distribution system for Jellico, Tennessee, to Jellico Gas Utility, Inc.

The matter was heard May 17, 1989, in Nashville, Tennessee, before Ralph B. Christian, II, Administrative Judge, at which time the following appearances were entered:

APPEARANCES:

DAVID CROSS, Attorney At Law, P. O. Box 370, Albany, Kentucky 42606, appearing on behalf of the Applicant, Ken-Gas of Tennessee, Inc.

STEVE COBB, Waller Lansden Dortch & Davis, 2100 One Commerce Place, Nashville, Tennessee 37239, on behalf of the Applicant.

D. BILLYE SANDERS, Assistant General Counsel, Tennessee Public Service Commission, 460 James Robertson Parkway, Nashville, Tennessee 37243-0505, appearing on behalf of the Commission Staff.

The hearing was continued until July 10, 1989, and again until August 24, 1989, to allow Petitioner additional time to

provide information previously requested by the Commission Staff. Subsequently, materials submitted by the Petitioner were reviewed and it was determined no further oral testimony was necessary.

PRELIMINARY MATTERS

By order of September 16, 1988, the Administrative Judge approved the application of Ken-Gas of Tennessee, Inc. for a certificate of convenience and necessity for the construction and operation of a natural gas distribution system. The certificate was issued by the Public Service Commission October 13, 1988. On December 27, 1988, Ken-Gas of Tennessee, Inc., filed a petition requesting that the Tennessee Public Service Commission approve the transfer of the aforesaid certificate of public convenience and necessity to Jellico Gas Utility, Inc. The petition was docketed as number 89-02042.

The proposed natural gas distribution system was designed to offer service within the corporate limits of Jellico, Tennessee, and to Oswego Industrial Park located approximately one mile from the Jellico city limits. Ken-Gas was awarded a franchise from the City of Jellico on the third reading of an ordinance approved October 15, 1987. Said ordinance is known as the Jellico Natural Gas Franchise Ordinance and is designated as Ordinance Number 4-87.

At the hearings to transfer the certificate from Ken-Gas of Tennessee, Inc. to Jellico Gas Utility, Inc., testimony was presented by Mr. Walton Haddix, who represented both the transferor and the transferee.

DISCUSSION OF FACTS

The evidence produced at the hearing and subsequently submitted as late-filed exhibits, established that the contract between Delta Natural Gas Co., Inc., and Ken-Gas of Tennessee, Inc., has been assigned to Jellico Gas Utility, Inc. and that the aforesaid contract has been appropriately extended to permit Jellico Gas Utility, Inc. to begin service at a later date.

The evidence produced at hearing and subsequent documentation established that Jellico Gas Utility, Inc. has access to the financial resources to create and operate the gas distribution utility. As evidence of this, Applicant submitted copies of an agreement providing for an SBA guaranteed loan by Fentress County Bank to Jellico Gas Utility, Inc., documentation from the Small Business Administration regarding information on the terms of the permanent loan, and testimony that a construction loan was being negotiated. The transferee stated it would implement the same rates approved for Ken-Gas of Tennessee, Inc. The petitioners also submitted:

- a) A list of the stockholders of Jellico Gas Utility, Inc., including their addresses and consideration contributed in exchange for their stock, and
- b) A list of individuals who will manage the gas company.

Finally, the operating and maintenance manual and an emergency procedures manual filed by Jellico Gas Utility, Inc. were submitted and reviewed by the Staff of the Commission and, upon the recommendation of Glynn Blanton, Director of Gas

Pipeline Safety, were approved as in compliance with minimum federal safety standards.

The Commission Staff presented evidence that the transferee, Jellico Gas Utility, Inc., repeatedly submitted inadequate information and/or late information (even when the deadline was agreed to by the company in advance) in response to the Staff's data requests. The Staff also submitted evidence regarding Mr. Haddix's failure to supply information to the Kentucky Public Service Commission regarding another gas company with which he was involved that resulted in his being fined and admonished by that Commission. As a result of these incidents, the Staff expressed reservations concerning the ability of Jellico Gas Utility, Inc. to comply with the rules and regulations of the Tennessee Public Service Commission. However, the Staff eventually received sufficient information to evaluate the transferee's proposed operations and concluded that the public would not be adversely affected by the transfer.

After reviewing the evidence, the Administrative Judge finds that Jellico Gas Utility, Inc. appears to be a suitable transferee for the certificate of convenience and necessity heretofore issued to Ken-Gas of Tennessee, Inc. for the construction and operation of a natural gas distribution system. However, its lack of diligence in providing the Commission with information is unacceptable. The Administrative Judge finds that Jellico Gas Utility, Inc. has demonstrated the financial capacity to construct the aforesaid natural gas distribution system and finds that the projected revenues from the delivery of said gas

will provide sufficient funds, after expenses, to service the debt obligations of Jellico Gas Utility, Inc. Finally, the Administrative Judge finds that the proposed transfer will not adversely affect the potential rate payers of Ken-Gas of Tennessee, Inc.

CONCLUSIONS OF LAW

Based upon the above findings, the Administrative Judge concludes that the application for a transfer of the certificate of convenience and necessity from Ken-Gas of Tennessee, Inc. to Jellico Gas Utility, Inc. should be granted; however, Jellico Gas Utility, Inc. is admonished to promptly respond to future data requests of the Commission Staff and to otherwise abide by the policies, procedures, rules and regulations of the Commission.

T.C.A. Section 4-5-315 provides that all parties shall have an opportunity to appeal initial orders to the Commission. The Tennessee Public Service Commission, however, reviews all initial orders, thereby assuring review. All parties may file exceptions or replies to exceptions in the form of a brief setting forth specific issues. The exceptions and any replies thereto will be considered by the Commission in its review. The Commission will determine the matter in a regularly scheduled Commission conference. Affected parties may then seek reconsideration of the Commission's final order or may appeal the final order to the Court of Appeals, Middle Division, within 30 days of the final order.

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
October 13, 1988 Nashville, Tennessee

COPY

DO NOT REMOVE

IN RE: APPLICATION OF KEN-GAS OF TENNESSEE, INC. FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE CONSTRUCTION OF A NATURAL GAS DISTRIBUTION SYSTEM, APPROVAL OF FINANCING AND CONSTRUCTION COSTS AND APPROVAL OF APPLICABLE RATES.

DOCKET NO. U-87-7538

ORDER

This matter is before the Tennessee Public Service Commission upon the application of Ken-Gas of Tennessee, Inc. for a Certificate of Convenience and Necessity as set forth in the above caption.

The matter was set for hearing and was heard on March 15, 1988 before Ralph B. Christian, II, the Administrative Judge. On September 16, 1988 the Administrative Judge issued his Initial Order recommending that the application be granted.

The Commission considered this matter at the Commission Conference held on October 4, 1988. It was concluded after careful consideration of the entire record, including the Administrative Judge's Initial Order and all applicable laws and statutes that the Administrative Judge's Initial Order should be approved and the authority granted. The Commission further ratifies and adopts the findings and conclusions of the Administrative Judge as its own.

IT IS THEREFORE ORDERED:

1. That the Administrative Judge's Initial Order dated September 16, 1988, in this docket is hereby ratified, adopted and incorporated by reference in this Order as fully as though copied verbatim herein, including the findings and conclusions of the Administrative Judge which the Commission adopts as its own.

2. That a Certificate of Convenience and Necessity to construct and operate a natural gas distribution system is hereby granted.

3. That within sixty (60) days of the substantial completion of construction, Ken-Gas of Tennessee, Inc. is directed to file its final costs in accordance with the Uniform System of Accounts with the Tennessee Public Service Commission.

4. That within thirty (30) days of substantial completion of construction, Ken-Gas of Tennessee, Inc. is directed to file a copy of the "As-Built" drawings and a signed statement that the construction has been satisfactorily completed in accordance with the contract plans and specifications with the Tennessee Public Service Commission.

5. That the proposed financing plan, its amounts, interests rates, and amortization periods as set forth herein, is hereby approved.

6. That the costs, as determined by the Tennessee Public Service Commission Staff and set forth in Schedules 1 through 9, are hereby approved.

7. That the rates as set forth herein are hereby approved.

8. That Ken-Gas of Tennessee, Inc. is hereby directed to file a tariff with the Tennessee Public Service Commission setting forth the rates approved herein before commencing operations.

9. That Ken-Gas of Tennessee, Inc. is hereby directed to file a copy of its General Rules and Regulations as prescribed by T.P.S.C. Rule 1220-4-1-.01 through .07.

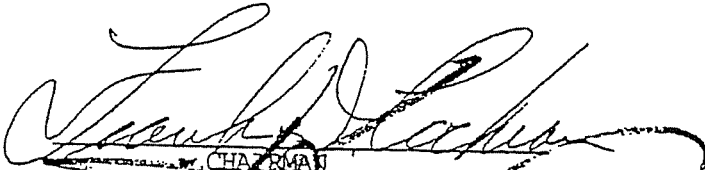
10. That Ken-Gas of Tennessee, Inc. is hereby directed to maintain its accounting records in accordance with the methods

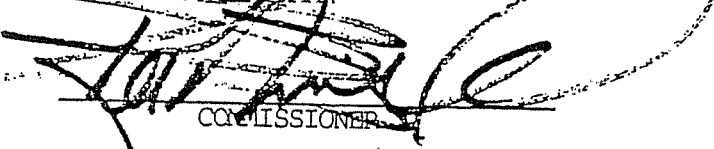
prescribed by the Uniform System of Accounting for Class C & D Utilities.


11. That Ken-Gas of Tennessee, Inc. is hereby directed to file a quarterly report, in the form of Quarterly Report Form PSC-3.04, within sixty (60) days of the end of the quarter covered by the report.

12. That any party aggrieved with the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within ten (10) days from and after the date of this Order.

13. That any party aggrieved with the Commission's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.


 CHAIRMAN


 COMMISSIONER


 COMMISSIONER

ATTEST:

 EXECUTIVE DIRECTOR

Approved by Board of Mayor and Aldermen
2/21/87

7

ORDINANCE NO. 4-87

AN ORDINANCE GRANTING A FRANCHISE TO KEN-GAS OF TENNESSEE, INC., ITS SUCCESSORS AND ASSIGNS, TO OPERATE AND MAINTAIN A GAS SYSTEM IN THE CITY OF JELLYCO, TN. INCLUDING A SYSTEM OF GAS MAINS AND SERVICE PIPES FOR THE PURPOSE OF TRANSMITTING AND DISTRIBUTING GAS IN, UPON, ACROSS, ALONG AND UNDER THE HIGHWAYS, STREETS, AVENUES, ROADS, ALLEYS, LANES, WAYS, UTILITY EASEMENTS, PARKWAYS AND OTHER PUBLIC GROUNDS OF THE CITY OF JELLYCO, TENNESSEE.

BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF JELLYCO, TENNESSEE, as follows:

SECTION 1. This Ordinance shall be known and may be cited as the "JELLYCO NATURAL GAS Franchise Ordinance."

SECTION 2. For the purpose of this Ordinance, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

(1) "City " is the City of Jellyco, Tennessee, a municipal corporation;

(2) "Company" is KEN-GAS OF TENNESSEE, INC., the grantee of the rights under this franchise, a Kentucky corporation, authorized to do business within the State of Tennessee, with a mailing address located at Route 3, Box 66, Albany, Kentucky 42602.

(3) "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.

SECTION 3. There is hereby granted by the City of Jellico, Tennessee to KEN-GAS OF TENNESSEE, INC., its successors and assigns, the right, authority, privilege and franchise to erect, construct, operate and maintain a system of gas mains, service pipes, regulator stations and all other necessary and appropriate equipment and facilities for the transmission and distribution of gas in, upon, across, along and under the highways, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways and other public grounds in the present or future corporate limits of the City of Jellico and in the environs of said City, and to import, transport, sell and distribute gas, whether natural, manufactured, or mixed, within the City and its environs, for the supplying and selling of said gas to said City, (as a customer) and the inhabitants, institutions, and businesses thereof; and for such purposes to construct, operate, maintain, renew, replace, repair, and extend all necessary gas mains, service pipes and other appliances, fixtures and facilities as may be necessary for said purposes, to-wit, the transmission, distribution and sale of such gas to said City and the inhabitants thereof, for domestic, commercial, industrial and institutional uses, and such other purposes for which it is or may hereafter be used.

SECTION 4. This franchise and the rights herein granted shall take effect and be enforced from and after the effective Date hereof, as required by law, and upon the filing of acceptance by the Company, and shall continue in force and effect

for a term of twenty-five (25) years after the effective date. provided, that if the acceptance is not filed within thirty (30) days after final passage of this Ordinance, the provisions of this franchise shall be null and void.

The Company is granted herewith an option to extend the term of this franchise for three (3) successive periods of five (5) years each, each such five (5) year renewal term to commence at the end of either the original twenty-five (25) year term or at the end of the preceding five (5) year renewal term, all in such manner that the Company may extend this franchise for a total period of time of fifteen (15) years; the original term of twenty-five (25) years shall be automatically extended for one of the aforesaid additional five (5) year renewal terms unless the Company tenders Notice to the City at least one (1) year next preceding the end of the original twenty-five (25) year term of such contrary intention (such Notice shall be in writing tendered by Certified Mail, Return Receipt Requested); each of the remaining two (2) successive five (5) year renewal terms shall likewise take effect automatically unless the Company likewise tenders Notice to the City that it does not intend to renew the franchise as aforesaid. It is intended hereby that by use of the original twenty-five (25) year term and the three (3) five (5) year renewal terms the Company may extend the original franchise, in its discretion, to a period of time of either 30 years, 35 years, or 40 years, but in no event shall the term of this franchise extend beyond forty (40) years unless such extension is

Both parties hereto acknowledge that good faith is an express part of the agreement between the parties, and each party pledges to exercise good faith in all of its dealings one with the other.

SECTION 5. All gas mains, service pipes, fixtures, facilities and other appliances laid, constructed, maintained and operated by virtue of this franchise, shall be laid, constructed, maintained and operated in accordance with all applicable engineering practices and in full accord with any and all applicable engineering codes adopted or approved by the natural gas distribution industry and/or engineering professions and in accordance with any applicable Statutes of the State of Tennessee, Ordinances of the City of Jellico and the Rules and Regulations of the Tennessee Public Service Commission or of any other governmental regulatory commission, board or agency having jurisdiction over the Company. Said facilities shall be so constructed as not to interfere with the drainage of said City, or interfere with or injure any street, sewer or other public improvement which said City has heretofore made or may hereafter make in, upon, across, along or under any highway, street, avenue, road, alley, lane, way, utility easement, parkway or other public grounds, or unnecessarily obstruct or impede such highway, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways or other public grounds of said City.

SECTION 6. When the highways, street, avenues, roads, alleys, lanes, ways, utility easements, parkways or other public

grounds are opened or any other opening is made by the Company within the City, whether the same be made for the purpose of laying, constructing, replacing or repairing the mains, pipes and other appliances and fixtures of said Company, said Company shall place and maintain all necessary safety devices, barriers, lights and warnings to properly notify all persons of any dangers resulting from such entrances, and shall comply with all safety regulations required by the federal, state or local laws.

SECTION 7. In the event that at any time during the period of this franchise the City shall lawfully elect to alter, or change the grade of, any street, alley or other public ways in which the Company is maintaining gas mains, pipes or other appliances and fixtures, the Company, upon reasonable written notice by the City, shall remove, or change or relocate its mains, pipes, or other appliances and fixtures as necessary to conform to the proposed alteration. However, the Company shall be reimbursed its relocation costs whenever such reimbursement is authorized by a Federal or State statute, for either urban renewal development or street relocation.

SECTION 8. When any highway, street, avenue, road, alley, lane, way, utility easement, parkway or other public ground is entered by the Company, the Company shall, within a reasonable time, restore the same to its former condition as nearly as practicable in such a manner as to meet the approval of the City's Consulting Engineer, Codes Inspector, or other responsible agent of the City, provided, however, that such

approval shall not be unreasonably withheld. In the event the Company shall fail to restore said streets, avenues, roads, alleys, lanes, ways, utility easements, parkways, or other public grounds to their former state, as nearly as practicable, the City may itself, after giving the Company reasonable written notice, make restoration and charge the costs thereof to the Company.

SECTION 9. The Company shall, at all times, defend, indemnify and hold harmless the City from and against any and all claims for injury to any person or property by the reason of the failure of the Company or its employees to exercise due care and diligence in and about the installing and maintenance of said system, guarding trenches and excavations while said system is being installed or subsequent extensions, repairs or alterations are being made or generally in the operation and maintenance of said system. provided the Company shall have been notified in writing of any claim against the City of account thereof, and shall have been afforded the opportunity fully to defend the same.

SECTION 10. The City and the Company hereby agree that this Ordinance shall, from time to time, be subject to Rules and Regulations adopted by the Company and approved by the Tennessee Public Service Commission or any other regulatory body having jurisdiction thereof during the term of this franchise, and shall also be subject to all Rules and Regulations adopted and approved by the Tennessee Public Service Commission itself; and that all such Rules and Regulations shall be and become part of this

Ordinance to the same extent and with the same effect as if said Rules and Regulations were herein set forth in full. The Company shall not be obligated or required to make any extension of distribution mains, except in accordance with the provisions relating thereto adopted or approved by the Tennessee Public Service Commission.

SECTION 11. Nothing contained herein shall be construed as preventing the Company from installing, placing, replacing, taking up, repairing or removing gas pipes, mains, service pipes or other devices for furnishing gas service, from using any easements for gas service which are shown on any plat or plats of any portion of the City heretofore or hereafter platted or recorded, or any easement which may hereafter be created, granted or dedicated for any such utility purposes by any person, firm or corporation whatsoever.

SECTION 12. No sale or transfer of the gas plant or system, or the transfer of any rights under this franchise shall be effective until the vendee, assignee or lessee has filed in the Office of the City Recorder an instrument, duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of this franchise, and agreeing to perform all the conditions thereof.

SECTION 13. The Company shall pay to the City a franchise fee in the amount of (\$100.00) One Hundred Dollars, within sixty (60) days of the Effective Date of this Ordinance. The Company shall further pay to the City during the

term of this franchise an amount equal to (One) 1% of the annual gross operating revenues from the sale of gas through the Company's distribution system within the City of Jellico as a further and additional franchise fee or tax. Said franchise tax shall become due and payable ninety (90) days from the end of the Company' fiscal year each year, so long as the Company shall supply and sell natural gas to the public within said City, or so long as this franchise is in effect. The aforementioned franchise fee and gross receipts tax provided by this Ordinance shall be treated and recovered as required by Tennessee Code Annotated, Section 65-4-105. The City shall have access at all reasonable times to the appropriate books of the Company for the purpose of ascertaining the amount due to the City under the Section. The Company shall furnish to the City an annual report showing the amount of its sales within the City.

SECTION 14. If any section or portion of any section of this Ordinance shall hereafter be declared or determined by a court of competent jurisdiction to be invalid, the Company, at its election (to be given to the City by notice in writing within thirty (30) days after any such declaration or determination) may ratify or confirm the remaining portions of this Ordinance and upon such ratifications or confirmation the remaining portions of this Ordinance shall remain in full force and effect.

SECTION 15. The Company shall, within thirty (30) days after the passage of this Ordinance, file with the City Recorder of the City of Jellico its unconditional acceptance of

the terms and conditions of this Ordinance signed by its President and, after the filing of such acceptance, this Ordinance shall constitute a contract between the parties hereto and shall (subject to the rights and powers vested in and Orders lawfully issued by the Tennessee Public Service Commission or such other regulatory body of the State of Tennessee as may hereafter succeed to the rights and powers of the Tennessee Public Service Commission) be the measure of the rights, powers, obligations, privileges and liabilities of the City and of the Company.

SECTION 16. All the privileges given and obligations created by this Ordinance shall be binding upon the successors and assigns of the Company, including those nonconflicting provisions which are now or may hereafter be attached herewith as addendums.

SECTION 17. This Ordinance is subject to the approval of the Tennessee Public Service Commission. The franchise shall take effect immediately the public welfare so requiring it.

CITY OF JELICO, TENNESSEE

BY: Francis Payne
FRANCIS PAYNE, Mayor

ATTEST:

Betty Hurst
BETTY HURST, City Recorder

PASSED FIRST READING: 9-17-87

PASSED SECOND READING: 9-17-87

PASSED THIRD READING: 10-15-87

ACCEPTED BY: KEN-GAS OF TENNESSEE, INC.
ROUTE 3, BOX 66
ALBANY, KENTUCKY 42602

Kenneth R. Turner
KENNETH R. TURNER, PRESIDENT

DATE: 10-15-87

ATTEST:

Phyllis S. Turner
PHYLLIS S. TURNER, SEC.

DATE: 10-15-87

This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.

Dated: October 21, 2010




C. Kathryn Preston
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:

GASCO DISTRIBUTION
SYSTEMS, INC.

Debtor.

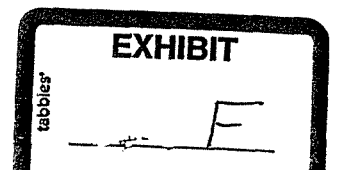
Case No. 09-056171

Chapter 11

Judge C. Kathryn Preston

**ORDER (A) APPROVING THE SALE OF SUBSTANTIALLY ALL OF DEBTOR'S
UTILITY DISTRIBUTION SYSTEMS ASSETS TO SUCCESSFUL BIDDER AT AUCTION;
(B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN
EXECUTORY CONTRACTS; AND (C) GRANTING OTHER RELATED RELIEF
[RELATED TO DOC. NOS. 179, 199 and 211]**

This matter coming before the Court on the Motion of Gasco Distribution Systems, Inc., Debtor and Debtor in Possession ("Debtor"), for an Order (I) Authorizing the Sale of Substantially all of its Utility Distribution Systems Assets Free and Clear of Liens, Claims and Encumbrances under Asset Purchase Agreement, Subject to Higher and Better Offers, (II) Approving the Procedures for an Auction, (III) Authorizing the Assumption and Assignment of



Certain Executory Contracts in Connection Therewith, (IV) Scheduling an Auction and a Hearing Date Relating Thereto, (V) Approving Break-Up Fee, and (VI) Approving the Forms of Notice Thereof [Doc. No. 179] (the "Sale Motion"). The Sale Motion sought approval of, among other things, (i) the institution of bidding procedures to be employed in connection with the Debtor's sale of substantially all of the Debtor's utility distribution systems assets to Navitas Assets, LLC or its designated assigns (the "Buyer") pursuant to the terms and conditions of an Asset Purchase Agreement ("APA") subject to higher or otherwise better bids, and (ii) the scheduling of a bid submission deadline, auction, and sale hearing and objection deadline and the approval of the sale of substantially all of the Debtor's assets to Buyer under the APA subject to higher and better bids being received at auction, and the Debtor's assumption and assignment of certain of its executory contracts in connection therewith. In connection with the Sale Motion, the Court previously entered its *Order Authorizing And Approving The Bidding Procedures For An Auction Sale Of Substantially All of the Debtor's Utility Distribution Systems Assets, Scheduling An Auction Date And Sale Hearing Date And The Deadline For Objections To The Proposed Sale, And Approving Notices To Creditors And Parties In Interest* on August 23, 2010 [Docket No. 199] (the "Bid Procedures Order"). After the Auction held on October 12, 2010 pursuant to the Bid Procedures Order, and as identified in the Report of Auction Sale [Doc. No. 211] ("Auction Report")¹ filed herein by the Debtor, the Debtor has determined the Winning Bid and Winning Back-Up Bid as follows: Navitas Assets, LLC, the Stalking Horse ("Buyer") has been determined by the Debtor to be the Winning Bidder submitting the highest and best bid (the "Winning Bid") for the combination of the Jellico Utility and the Three ABF Utilities, with the

¹ Attached to the Report of Auction Sale is the Amendment to the APA as between the Debtor and Buyer, which, the Debtor represents, does not make any changes that are less favorable, nor more burdensome, than Buyer's APA. Also attached to the Report of Sale is the Winning Back-Up Bid of Powell Clinch for the Jellico Utility only, not including the increase of the purchase price at the Auction to \$570,000.

base purchase price² bid of \$760,200, and Powell Clinch Utility District of Anderson and Campbell County, Tennessee (“Powell Clinch”) has been determined by the Debtor to be the Winning Back-Up Bidder submitting the highest and best bid for the Jellico Utility Only “Winning Back-Up Bid” with a base purchase price of \$570,000. A hearing (“Sale Hearing”) was held on the Sale Motion and Auction Report and to consider approval of the Winning Bid and Winning Back-Up Bid on October 19, 2010; and all creditors and parties in interest have been afforded an opportunity to be heard with respect to the Sale Motion and Auction Report and all relief sought thereunder, and the Court being otherwise duly advised and informed in the premises, and noting that there have been no objections, the Court, for the reasons stated on the record at the Sales Hearing, and further based upon the Sale Motion and Auction Report, hereby finds and Orders as follows.³

IT IS HEREBY FOUND AND DETERMINED THAT:

A. This Court has jurisdiction over the Sale Motion pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue of this case and the Sale Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought in the Motion are Sections 105(a), 363(b), (f), (m) and (n), and 365 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, as amended (the “Bankruptcy Code”), and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

B. The Debtor has conducted a thorough and adequate search for potential purchasers for the Distribution Systems or Assets (“Assets”).

C. Proper, timely, adequate and sufficient notice of the Sale Motion, the Sale Hearing, and the transactions contemplated by the APA and this Order (the “Transactions”), including,

² As set forth in the Sale Motion, page 7, Buyer’s APA, not only has a base purchase price, but customary adjustments including credit/debits, as appropriate, including for customer deposits, accounts receivable collected within a certain time, spare parts, unrecovered gas costs and Cure Amounts on Assumed Contracts. The Debtor represents that the Winning Back-Up Bid contains similar adjustments.

³ All capitalized terms not defined in this Order shall have the same meanings as in the Sale Motion or the Winning Bidder’s APA, and, as appropriate, the Winning Back-Up Bidder’s APA.

without limitation, the assumption and assignment of the Assumed Contracts, has been provided in accordance with Sections 105(a), 363 and 365 of the Bankruptcy Code and Rules 2002, 6004, 6006, and 9014 of the Bankruptcy Rules. Such notice was good, sufficient and appropriate under the particular circumstances, and no other or further notice of the Sale Motion, the Sale Hearing, or the transactions, including, without limitation, the assumption and assignment of the Assumed Contracts, is or shall be required.

D. As demonstrated by (i) the testimony and/or other evidence proffered at the Sale Hearing, and (ii) the representations of counsel made on the record at the Sale Hearing, the Debtor has conducted the sale process fairly and openly in a manner reasonably calculated to produce the highest and best offers for the Assets under the circumstances and in compliance with the Bid Procedures Order. The Sale Hearing was held and the highest and best offer received by the Debtor for the Assets at or before the Sale Hearing was the offer by Buyer to purchase the Assets at a base purchase price of \$760,200, and such offer is reflected in the Buyer's APA⁴. The highest and best back-up bid on the Jellico Utility only is the \$570,000 offered by the Winning Back-Up Bidder, Powell Clinch, pursuant to the terms of the Winning Back-Up Bid.

E. Approval of the Buyer's APA and consummation of the Transactions, including the sale of the Assets at this time, is in the best interests of the Debtor, its creditors, its estate, and other parties in interest. The Debtor has established that strong business reasons exist for (i) selling the Assets outside the ordinary course of business and outside a plan and (ii) the assumption and assignment of the Assumed Contracts as specified in the APA. The sale of the Assets pursuant to the APA will produce higher value than could be obtained in a liquidation sale.

F. Upon review of the evidence presented or proffered, the Court finds that the APA was negotiated, proposed and entered into by the Debtor and the Buyer without collusion, in good faith, and from arm's-length bargaining positions. The terms of the APA are fair and reasonable. Neither the Debtor, nor the Buyer have engaged in any conduct that would cause or permit the APA or any part of the Transactions provided for herein to be avoided, or for the imposition of costs and damages against the Buyer under Section 363(n) of the Bankruptcy Code. The Buyer is not an insider of the Debtor as that term is defined in Section 101(31) of the Bankruptcy Code. The Buyer is not related to nor affiliated with the Debtor or any of its officers or shareholders.

G. Upon review of the evidence presented or proffered, the Court finds that the Buyer is a good faith purchaser under Section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby. The Buyer will be acting in good faith within the meaning of Section 363(m) of the Bankruptcy Code in closing the sale of the Assets pursuant to the APA.

H. The Debtor is the sole and lawful owner of the Assets. Subject to certain exceptions set forth herein, the Debtor may sell the Assets to the Buyer free and clear of all liens, claims and interests in accordance with, and to the extent permitted by, section 363(f) of the Bankruptcy Code. As a condition of purchasing the Assets, the Buyer requires that the Assets be sold free and clear of all liens, claims and interest, including all tax liens, except those explicitly and expressly assumed by the Buyer in the APA. Accordingly, the transfer of the Assets to the

⁴ "APA" as referenced singularly herein, shall only mean the Buyer's APA, as amended.

Buyer is or will be a legal, valid and effective transfer of the Assets, and will vest the Buyer with all right, title and interest in and to the Assets, free and clear of all liens, claims and interest, including all tax liens, except those explicitly and expressly assumed by the Buyer in the APA pursuant to, and to the fullest extent permitted by, section 363(f) of the Bankruptcy Code. Except as otherwise expressly set forth in the APA, the transfer of the Assets to Buyer does not and will not subject Buyer to any liability whatsoever with respect to the operation of the Debtor's business and/or the ownership of the Assets prior to the Closing.

I. Non-debtor parties holding valid liens, claims or interests in or with respect to the Assets who did not object to the Sale Motion or those whose objections were withdrawn are deemed to have consented to the sale of the Assets free and clear of their liens, claims or interests in or with respect to the Assets pursuant to section 363(f)(2) of the Bankruptcy Code.

J. In the event that the Buyer does not timely perform, or otherwise fails to close on the Transactions contemplated by the APA, and without otherwise releasing the Buyer from any claims that the Debtor may have under the APA, the Winning Back-Up Bid of Powell Clinch shall automatically be deemed to be the highest and best bid with respect to the Jellico Utility, and the Debtor and Powell Clinch, shall be authorized, but neither required to, close on the sale of the Jellico Utility as is commercially reasonable without further order of this Court, on the terms and conditions set forth in the Winning Back-Up Bid, except as modified herein. Accordingly, in such event, the findings of this Court with respect to the Buyer and the APA as set forth in paragraphs E, F, G, H, and I hereof shall also be deemed to equally apply to the Winning Back-Up Bidder and the Winning Back-Up Bid on the sale of the Jellico Utility only. Notwithstanding, Powell Clinch's closing on the purchase of the Jellico Utility on the terms and conditions set forth in its Winning Back-Up Bid and herein shall then be at its option and it shall not be obligated to so close, unless it subsequently agrees to do so.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion, as supplemented by the Auction Report, is GRANTED by this Order.

Approval of the Asset Purchase Agreement

2. The APA, and all of the terms and conditions thereof, as may be amended, including as may be amended by this Order, are hereby approved.

3. Pursuant to Sections 363(b) and (f) of the Bankruptcy Code, the Debtor is authorized and directed to consummate the sale of the Assets pursuant to and in accordance with the terms and conditions of the APA and this Order.

4. The Debtor is empowered to perform under, consummate and implement the APA, and is authorized and directed to take all other actions as are necessary to effectuate the Transactions, including executing and delivering all additional instruments and documents that may be reasonably necessary or desirable to implement the APA, and to take all further actions as may be requested by the Buyer for the purpose of assigning, transferring, granting, conveying and

conferring to the Buyer or reducing to possession, the Assets and the Assumed Contracts, or as may be necessary or appropriate to the performance of the obligations as contemplated by the APA.

Transfer of Assets Free and Clear of Liens

5. At Closing, Buyer shall acquire the Assets for the Purchase Price (as defined in the APA, to the extent modified hereby). Upon the payment of the Purchase Price for the respective assets, the Assets shall be transferred, and title passed, to the Buyer in the respective Assets pursuant to the fullest extent permitted by Sections 105(a) and 363(f) of the Bankruptcy Code and all other applicable laws, free and clear of all claims, liens, interests or encumbrances, including all tax liens, other than the Assumed Liabilities and such other liens, claims and interests as are expressly and explicitly assumed by the Buyer in the APA (collectively, the "Permitted Liens"), with all such liens, claims, interests or encumbrances of any kind or nature whatsoever (other than the Assumed Liabilities and the Permitted Liens) attaching to the proceeds of the sale of the Assets in the order of their priority, with the same validity, force and effect which they now have.

6. Except for the Assumed Liabilities (as defined in the APAs or as otherwise expressly provided for in the APA), the Buyer shall not have any liability or responsibility for any Liability (as defined in the APA) or other obligation of the Debtor arising under or related to the Assets. Without limiting the generality of the foregoing, and except as otherwise specifically provided in the APA, the Buyer shall not be liable for the Excluded Liabilities (as defined in the APA) or any other Liabilities against the Assets, Debtor or any of their predecessors or affiliates including, but not limited to, Liabilities whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtor or any obligations of the Debtor arising prior to the Closing Date, whether relating to or arising out of the Business (as defined in the APA), the Excluded Assets (as defined in the APA) or the Assets or otherwise, other than the Assumed Liabilities.

7. Except as expressly permitted or otherwise specifically provided by the APA, all parties holding liens or claims or interests of any kind or nature whatsoever against Debtor or the Assets (whether legal or equitable, secured or unsecured, matured or unmatured, known or unknown, liquidated or unliquidated, contingent or non-contingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Debtor, the Assets, the operation of the Debtor's business prior to the Closing Date, or the transfer of the Assets to the Buyer, hereby are forever barred, estopped, and permanently enjoined from asserting such persons' or entities' liens or claims against the Buyer, its successors or assigns, its property or assets, which claims are hereby transferred to the sale proceeds whether or not a party asserting any such claim has delivered to Buyer a release. But for the obligations under Assumed Contracts or other assumed liabilities as expressly provided for in the APA, Buyer shall not be liable for any claims of any kind or nature, whether prepetition or post-petition, matured or unmatured, fixed or contingent, liquidated or unliquidated, known or unknown, against the Debtor or any of their predecessors or affiliates, and the Buyer shall have no successor liability to the extent this Court has the authority to order same under applicable law.

8. Pursuant to sections 365(b), (c) and (f) of the Bankruptcy Code, and subject to this Order, the Debtor is authorized to assume and assign the executory contracts as were identified on the Notice of Intent to Assume (hereinafter referred to collectively as the "Assumed Contracts"), which, consistent with the APA and this Order, are those identified in the APA (as such terms are defined in the APA) designated for assignment to the Buyer pursuant to the APA, subject to the procedures established in the Bid Procedures Order.

9. Those Assigned Contracts, to which there has been no objection to assignment, assumption and the Cure Amount (i) shall be deemed assumed and assigned to the Buyer as of the Closing Date and (ii) the Buyer shall be deemed to have provided adequate assurance of its future performance under the relevant Assigned Contracts within the meaning of sections 365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(2)(B) of the Bankruptcy Code.

10. Upon Closing, the Buyer shall assume full responsibility and liability for all Assigned Contracts, including payment of all Cure Amounts (as have been established in accordance with Cure Notice), and Debtor shall have no further responsibility, financial or otherwise, under any Assumed Contracts for any defaults, breaches or other damages associated with the Assumed Contracts, whether arising or accruing prior to or subsequent to the Closing, except as follows: unless expressly assumed by the Buyer, the Debtor shall be responsible for any additional obligations accruing post petition since the filing of the Sales Motion under the Assigned Contracts through the date of Closing, and a portion of the Purchase Price may be applied to pay the same.

11. On or as promptly after the Closing Date as practical, the Cure Amounts to which no objections have been filed, or to which the Buyer and applicable non-debtor contract party have agreed as to the allowed Cure Amounts, shall be paid.

12. The Buyer shall only be required to assume the Assigned Contracts, subject to the applicable Cure Amounts, and the Debtor shall not be deemed to assume any executory contract that is not assigned to the Buyer.

13. There shall be no rent accelerations, assignment fees, increases or any other fees charged to the Buyer as a result of the assumption and assignment of any Assigned Contract.

14. Pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, all parties to the Assigned Contracts are forever barred and enjoined from raising or asserting against the Buyer any assignment fee, default, breach or claim or pecuniary loss, or condition to assignment, arising under or related to the Assigned Contracts existing as of the Closing or arising by reason of the Closing, except for any post-petition amounts that are Assumed Liabilities being assumed by the Buyer under the APA. Payment of the Cure Amounts shall be deemed to discharge the Debtor's obligation to: (i) cure, or provide adequate assurance that the Debtor will promptly cure, any defaults under the Assigned Contracts and (ii) compensate, or provide adequate assurance that the Debtor will promptly compensate any non-debtor party to the Assigned Contracts for any actual pecuniary loss resulting from any default under the Assigned Contracts.

15. In accordance with sections 365(b)(2) and (f) of the Bankruptcy Code, upon transfer of the Assigned Contracts to the Buyer, (i) the Buyer shall have all of the rights of the Debtor hereunder and each provision of such Assigned Contracts shall remain in full force and effect for the benefit of the Buyer notwithstanding any provision in any such Assigned Contract or in applicable law that prohibits, restricts or limits in any way such assignment or transfer, and(ii) no Assigned Contract may be terminated, or the rights of any party modified in any respect, including pursuant to any "change of control" clause, by any other party thereto as a result of the consummation of the Transactions.

16. The Debtor shall reject all executory contracts relating to the Distribution Systems that are not Assumed Contracts, pursuant to Section 365 of the Bankruptcy Code, which rejection shall be effective on the Closing Date by serving a Rejection Notice to the holders of those executory contracts that are not Assumed Contracts.

17. The transfer of the Assets to the Buyer pursuant to the APA and this Order constitutes a legal, valid, and effective transfer of the Assets, and shall vest the Buyer with the same right, title and interest of the Debtor in and to the Purchased Assets free and clear of all liens of any kind or nature whatsoever (but for the Assumed Liabilities and the Permitted Liens) notwithstanding any requirement for approval or consent by any entity (as defined in Section 101(15) of the Bankruptcy Code).

18. From and after the entry of this Order, the Debtor, and all third parties with notice of the sale shall not take or cause to be taken any action which would interfere with the transfer of the Assets to Buyer in accordance with the terms of this Order or the APA or the use and operation by the Buyer of the Assets.

19. The transfer of the Assets to the Buyer pursuant to the APA is an exchange for consideration by the Buyer constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession or the District of Columbia.

Additional Provisions

20. On the Closing Date of the Transactions, each of the Debtor's creditors, secured or otherwise, are authorized and directed to execute such documents and take all other actions as may be necessary to release their liens in the Assets, if any, as such Liens may have been recorded or may otherwise exist.

21. If any person or entity asserting a security interest has filed financing statements, mortgages, construction liens, mechanic's liens, judgment liens, *lis pendens*, or other documents or agreements evidencing liens or encumbrances with respect to the Assets, and has not delivered to the Debtor and/or the Buyer prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, and/or releases of all liens which the person or entity has with respect to any of the Assets then (a) the Debtor or the Buyer are hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Assets and (b)

the Buyer is hereby authorized to file, register, or otherwise record a certified copy of this Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all liens in the Assets of any kind or nature whatsoever.

22. Any notices required to be given to the Debtor's employees pursuant to any federal or state labor or similar laws shall be the sole responsibility of Debtor, and the Buyer shall have no liability for Debtor's failure to do so. Buyer shall have no obligation to pay wages, bonuses, vacation pay, severance pay, benefits of any kind (including without limitation accrued unpaid medical benefits), or incentives, or retention payments, workers compensation, or unemployment benefits or any other payment with respect to employees or former employees of the Debtor.

23. This Court shall retain exclusive jurisdiction to implement and effectuate the provisions of this Order and the APA and to resolve any issue or dispute concerning the interpretation, implementation or enforcement of this Order and the APA and any subsequent agreement as required to be entered into between the Debtor and the Buyer pursuant to this Order, or the rights and duties of the parties hereunder or thereunder, including, without limitation, any issue or dispute concerning the transfer of the Assets free and clear of liens, claims, interests or encumbrances.

24. Any stay, modification, reversal or vacation of this Order will not affect the validity of any obligation of the Debtor to the Buyer incurred under this Order. Notwithstanding any such stay, modification, reversal or vacation, all obligations incurred by the Debtor under this Order and the APA prior to the effective date of such stay, modification, reversal or vacation will be governed in all respects by the original provisions of this Order, and the Buyer is entitled to the rights, privileges and benefits granted in this Order with respect to all such obligations.

25. The transactions contemplated by the APA are undertaken by the Buyer in good faith, as that term is used in Section 363(m) of the Bankruptcy Code. Accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the transactions shall not affect the validity of the Transactions as to the Buyer, except to the extent such authorization is duly stayed pending such appeal prior to such consummation. The evidence presented or proffered has demonstrated that the Buyer is a purchaser in good faith of the Assets and is entitled to all of the protections afforded by Section 363(m) of the Bankruptcy Code.

26. The terms and provisions of this Order shall be binding in all respects upon and shall inure to the benefit of, the Debtor, its estate, and their creditors, the Buyer and its affiliates, successors and assigns, and shall be binding in all respects upon any affected third parties including, but not limited to, all persons asserting liens in such Assets, notwithstanding any subsequent appointment of any Chapter 11 or Chapter 7 trustee(s), upon which such terms and provisions likewise shall be binding.

27. Based upon the evidence presented or proffered, it has been determined that the Buyer shall not be deemed to (a) be the successor in interest of the Debtor; (b) have, de facto or otherwise, merged with or into the Debtor; or (c) be a continuation of the Debtor.

28. The failure specifically to include any particular provision of the APA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the APA be authorized and approved in its entirety. Likewise, all of the provisions of this Order are non-severable and mutually dependent.

29. The APA and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing to be signed by all parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtor's estate.

30. Nothing contained in any plan confirmed in this case or any Order of this Court confirming such plan shall conflict with or derogate from the provisions of the APA or the terms of this Order.

31. The Closing on the Transactions cannot occur without the authority of the state and local governmental jurisdictions from which the Debtor currently has the authority to operate its respective utilities. The Court acknowledges that obtaining such regulatory authority may take a number of months and accordingly, that the Debtor shall be required to continue to operate the Jellico Utility and the Three ABF Utilities until such transfers are approved by the Court.

32. As requested in the Motion, the Debtor is authorized to pay, from the proceeds of the Purchase Price with respect to the respective assets, the amounts owing to the state and local governments for taxes as identified in the motion in reduced amounts as agreed to by the Debtor and by such taxing authorities, up to the amounts as set forth in the Motion without further Order of this Court. Notwithstanding the foregoing, and except for any Permitted Liens, Buyer shall have no obligation to pay any remaining outstanding liabilities of Debtor with respect to any state, local or federal taxes.

33. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Order. In the event that all conditions precedent to closing have been met or waived under the APA, the Debtor and the Buyer are hereby authorized to consummate the Transactions upon entry of this Order or as soon as reasonably possible thereafter.

34. In the event that the Buyer does not timely perform, or otherwise fails to close on the Transactions contemplated by the APA, and without otherwise releasing the Buyer from any claims that the Debtor may have under the APA, the Winning Back-Up Bid of Powell Clinch shall automatically be deemed to be the highest and best bid with respect to the Jellico Utility, and the Debtor and Powell Clinch, shall be authorized, but neither required to, close on the sale of the Jellico Utility as is commercially reasonable without further order of this Court, on the terms and conditions set forth in the Winning Back-Up Bid, except as modified herein. Accordingly, in such event, the findings, orders and the provisions of paragraphs 1 through 35 of

this Order with respect to the Buyer and the APA and the consummation of the Transactions shall also be deemed to equally apply to the Winning Back-Up Bidder and the Winning Back-Up Bid on the sale of the Jellico Utility only. Notwithstanding, Powell Clinch's closing on the purchase of the Jellico Utility on the terms and conditions set forth in its Winning Back-Up Bid and herein shall then be at its option and it shall not be obligated to so close, unless it subsequently agrees to do so.

35. Debtor's counsel shall promptly return the Earnest Money Deposits of \$50,000 each that counsel received from Powell Clinch and Delta Natural Gas Company, Inc. of Westchester, Kentucky with their bids.

Copies to:

Default List

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(Counsel for Powell Clinch, Winning Back-Up Bidder)

TWENTY LARGEST CREDITORS

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Estate of James D. Burgin
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Crossville, TN 38555-4894

Del Gasco, Inc.
3617 Lexington Road
Winchester, KY 40391

Flatiron Capital
950 17th Street, Suite 1300
Denver, CO 80202

Gatherco, Inc.
5772 Dressler Road NW
Canton, OH 44720

Internal Revenue Service
ACS Support – Stop 813G
PO Box 145566
Cincinnati, OH 45250-5566

Kentucky Department of Revenue
Division of Collections
501 High Street
PO Box 491
Frankfort, KY 40602

Kentucky, City of Albany
PO Box 129
Albany, KY 42602

Pickett County Tennessee
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1 Courthouse Square, Suite 203
Byrdstown, TN 38549

Kentucky, Clinton County
c/o Ricky Riddle
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Albany, KY 42602

Ohio, Dept. of Taxation
Public Utility Tax Section
PO Box 530
Columbus, OH 43216

Pennsylvania, Commonwealth of
Office of the AG
Financial Enforcement
564 Forbes Avenue, 5th Floor, Manor Comp.
Pittsburgh, PA 15219

Commonwealth of Pennsylvania
Dept. of Revenue, Bureau of Compliance
PO Box 280946
Harrisburg, PA 17128-0946

Potesta & Associates
7012 MacCorkle Avenue, SE
Charleston, WV 25304

Tennessee Dept. of Revenue
Andrew Jackson State Office Building
500 Deaderick Street
Nashville, TN 37242-0700

Campbell County Tennessee
Wm. F. Archer, Clerk and Master
Box 182
Jacksboro, TN 37757

Tennessee, City of Byrdstown
PO Box 325
Byrdstown, TN 38549

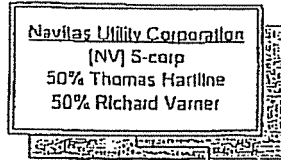
Pickett County Tennessee
c/o Sue Whited, Clerk and Master
1 Courthouse Square, Suite 203
Byrdstown, TN 38549

Utility Pipeline, Ltd
Attn: David J. Eigel, President
5900 Mayfair Road
Canton, OH 44720

West Virginia State Income Tax Dept.
Internal Audit Division
PO Box 1202
Charleston, WV 25324-1202

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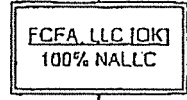
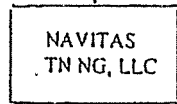
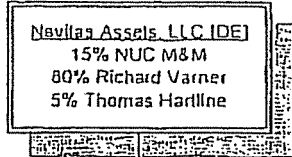
Utility Operator



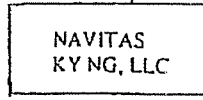
OPERATING FLT & EQ
Vehicles
Heavy Equipment
Tooling
Office F&E
Meters & Regulators

OPERATING W/C
Inventory
Prepays
Line of Credit

Utility Company



TRANSMISSION ASSETS
HP Pipeline - 90mi

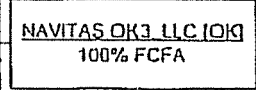


DISTRIBUTION ASSETS
2 counties
Pipeline - 620mi
Land

RIGHT-TO-SERVE
Accounts Receivable

PUBLIC GAS ASSETS
-2 counties
Krebs - 25mi

VPWA ASSETS
-1 county
Velma - 40mi



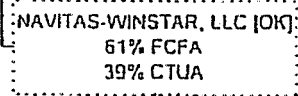
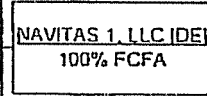
CP - RIMROCK ASSETS
4 counties
LP pipeline - 200mi

TKO
-1 county
Greenfield - 10mi

KPWA ASSETS
Kinta - 5mi

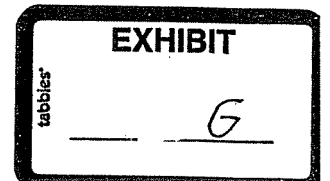
OPWA ASSETS
-1 county
Dustin - 10mi

LEANN DIVISION ASSETS
-6 counties
150mi

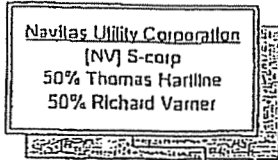


GREENFIELD PROJECT
1 county
Thackerville - 16mi

Navitas Companies



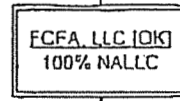
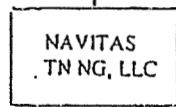
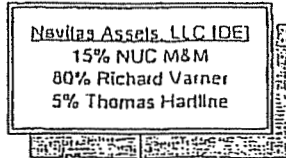
Utility Operator



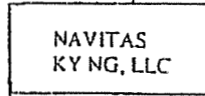
OPERATING FLT & EQ
Vehicles
Heavy Equipment
Tooling
Office F&E
Meters & Regulators

OPERATING W/C
Inventory
Prepays
Line of Credit

Utility Company



TRANSMISSION ASSETS
HP Pipeline - 90mi

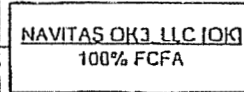


DISTRIBUTION ASSETS
2 counties
Pipeline - 620mi
Land

RIGHT-TO-SERVE
Accounts Receivable

PUBLIC GAS ASSETS
-2 counties
Krebs - 25mi

VPWA ASSETS
-1 county
Velma - 40mi



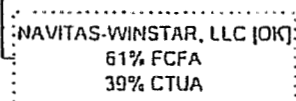
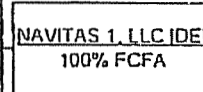
CP - RIMROCK ASSETS
4 counties
LP pipeline - 200mi

TKO
-1 county
Greenfield - 10mi

KPWA ASSETS
Kinta - 5mi

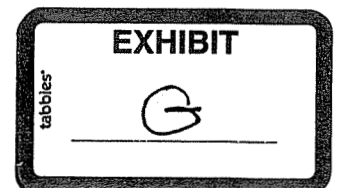
OPWA ASSETS
-1 county
Dustin - 10mi

LEANN DIVISION ASSETS
-6 counties
150mi



GREENFIELD PROJECT
1 county
Thackerville - 16mi

Navitas Companies





Competitive Energy For Rural America

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Management

Richard Varner - CEO

Mr. Richard Varner brings over 31 years of petroleum industry experience to the Navitas Companies. He has held positions in a number of downstream and midstream operations as well as being involved directly in oil and gas producing entities.

Varner, a native of Wichita, Kansas, attended the University of Nebraska on a full athletic grant-in-aid, receiving a Bachelor's degree in Business Administration in 1976. He received his MBA from the University of Kansas in 1978.

Upon graduation Varner worked on the crude petroleum trading desks for the Coastal Corporation in the U.S. and Europe. In addition he served as an equity partner and trader at Questor Petroleum, and held trading positions at Avant Petroleum, a wholly owned subsidiary of Mitsui & Company, USA.

In 1982 Varner returned to the Coastal Corporation to head domestic crude oil operations, and helped form and run its commodity trading operations, during this period and served on NYMEX crude oil contract advisory committee.

Varner transferred to the U.S. West Coast as head of Coastal's West Coast refining and marketing subsidiary, Pacific Refining Company. During this assignment as Pacific's CEO, The Coastal Corporation and The China National Chemical Import and Export Company, (SINOCHEM) formed a joint venture to own and operate the Pacific Refining Company. Varner chaired this organization until leaving in 1991 to form and own Newport Petroleum, Inc.

Newport Petroleum was primarily engaged in the marine transportation, and terminalling of petroleum products along the West Coast of the United States, Canada, Mexico and Hawaii. Newport Petroleum eventually grew its operations to include 9 ocean-going tug and barge units, with primary operators in Alaska, California, and Washington. Cabrillo Shipping, an affiliated company, was the first container-on-barge operation between the ports of Los Angeles/Long Beach and Mexico.

Since the sale of Newport Petroleum in 2003, he has actively been involved in the acquisition of LDC and pipeline assets in the natural gas industry through Navitas Utilities, LLC.

Thomas Hartline - President

Growing up in the farming community of Bakersfield, Calif. gave Thomas Hartline a strong affinity for rural America. Working for 20 years in the energy and heavy construction industries provided him the insight to know that energy is the measure and blood of a modern society.

Hartline was aware that America's rural populations had declined steadily since the end of World War II. He decided to use his education and experience to breathe new life into small-town infrastructure and fill a need not being met by major utility companies, which are better equipped to serve larger cities.

In 2007, Hartline and his business partner Richard Varner formed The Navitas Companies in Irvine, Calif. to make strategic investments in the energy assets of rural America's communities. Their mission was to acquire existing utilities and bring them up to standards necessary for homeowners and farming operations to thrive and for businesses and factories to locate in and utilize the stable and talented farming community workforce.

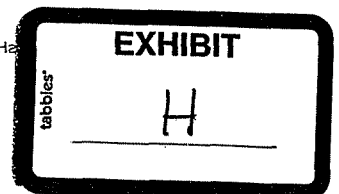
The Navitas Companies consist of two entities, Navitas Assets, LLC (NALLC), an energy assets holding company designed to develop energy projects and to physically operate energy assets, and Navitas Utility Corporation (NUC), which provides administration, operational and support services to utility companies.

NALLC's first acquisition in May 2007 was Fort Cobb Fuel Authority serving 1,500 customers in Caddo and Washita Counties of Oklahoma with 600 miles of natural gas distribution pipeline. Since then, NALLC has acquired seven additional systems in communities throughout Oklahoma totaling 1,200 miles of pipeline, serving 4,500 customers. The company's growth strategy includes expansion into additional underserved Oklahoma markets, as well as other states across America.

One of NUC's priorities is to utilize, through renovation, existing buildings to serve as the company's satellite offices, while preserving their local flair and historic value. Hartline believes that by successfully investing in these communities, NUC is helping rural towns create an environment where new businesses can locate. "All that's needed is a small seed of investment to create a new sense of business growth," he said.

Prior to forming The Navitas Companies, Hartline worked as a consultant in the energy industry where he learned to navigate the heavily regulated environment of energy utilities. He held nearly every position as a contractor, from a union apprentice operator to director.

At TDH Construction Consulting in Lake Forest, California, Ha



International. The project was designed to improve supply flow for the land-locked nation of Uganda to help spark new economic development. He also implemented the turnaround management and divestiture of a Chilean pipeline subsidiary ARB Chile Ltda, as well as turnaround management of operations and divestiture for a Guyana mining subsidiary of Rock Creek Energy. He arranged for more than \$100 million in asset-backed new loans for numerous entities.

While at TDH, Hartline also worked on a long-term consulting assignment with Stockdale Investment Group. This included extensive work on the development of Mammoth Lakes Gas Distribution System in California. This unregulated propane-based system delivers more than a half-million gallons per year to residential and commercial customers in a mountain resort community. Over the five-year assignment revenue from the addition of new businesses and homes tripled from \$250,000 to \$750,000, and earnings increased ten-fold from \$25,000 to \$250,000.

Prior to his work in the energy field, Hartline worked for the Bay Area branch of Granite Construction Company as a senior large jobs estimator and project manager.

Hartline earned a Bachelor of Arts in liberal studies from California State University, Bakersfield. He holds a Master of Construction Management from the University of Southern California and a Master of Business Administration from the University of California, Irvine. He is a licensed general engineering contractor and a citizen of the Chickasaw Nation.

EXHIBIT I

2009 Federal and State Income Tax Returns and Independent Auditor's Report

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