

Ernie Fletcher
Governor



LaJuana S. Wilcher
Secretary

Commonwealth of Kentucky
Environmental and Public Protection Cabinet
Public Service Commission

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August 20, 2004

Mr. Richard S. Taylor
Capital Link
225 Capital Avenue
Frankfort, KY 40601

Dear Mr. Taylor:

This letter is a follow-up to Staff's meeting on July 9, 2004 with you and Judy Cooper of Columbia Gas of Kentucky, Inc. ("Columbia") in which you requested that Staff issue an opinion on whether the Public Service Commission would have jurisdiction over an action planned by Columbia.

You presented the following facts: NiSource, Inc., the parent company of Columbia Natural Resources ("CNR") and Columbia, transferred ownership of CNR to Triana. You state that Triana now wants to sell a pipeline to Equitable Production. This pipeline serves 13 customers pursuant to KRS 278.485. You state that Columbia owns the meters that meter the gas, bills the 13 customers based on its tariffed rates, and collects revenues from these customers as it does from its own distribution customers. You further state that Columbia plans to transfer the meters, which have an original book value of less than \$1,000,000, to Equitable Production and to cease providing the services outlined above.

KRS 278.020 and KRS 278.218 both apply to the acquisition and transfer of utility assets. KRS 278.020(4) states:

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

KRS 278.020(5) states in part:

No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an "acquirer"), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission. Any acquisition of control without prior authorization shall be void and of no effect. As used in this subsection, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a utility, whether through the ownership of voting securities, by effecting a change in the composition of the board of directors, by contract or otherwise. Control shall be presumed to exist if any individual or entity, directly or indirectly, owns ten percent (10%) or more of the voting securities of the utility. This presumption may be rebutted by a showing that ownership does not in fact confer control.

KRS 278.218 states:

- (1) No person shall acquire or transfer ownership of or control, or the right to control, any assets that are owned by a utility as defined under KRS 278.010(3) without prior approval of the commission, if the assets have an original book value of one million dollars (\$1,000,000) or more and:
 - (a) The assets are to be transferred by the utility for reasons other than obsolescence; or
 - (b) The assets will continue to be used to provide the same or similar service to the utility or its customers.

KRS 278.020 is not applicable to the proposed action as Columbia is not transferring ownership of, control, or the right to control any utility. KRS 278.218 is not applicable because Columbia is not transferring ownership of, control, or the right to control any assets that have an original book value of \$1,000,000 or more.

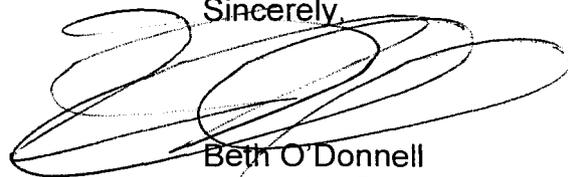
It is Staff's opinion that Commission approval is not required for the proposed transaction. Staff suggests that Columbia notify the customers being served on this pipeline to advise them that after a certain date Columbia will no longer meter and bill

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for the gas service. Staff believes that it would be beneficial for Columbia and Equitable Production to write a joint letter to the customers. This would not only permit Columbia the opportunity to inform the customers that it no longer would be providing these services, but would permit Equitable Production to introduce itself and to inform the customers of the new rates to be charged by Equitable Production.

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Anita Mitchell at Extension 258.

Sincerely,

A handwritten signature in black ink, appearing to read "Beth O'Donnell", written over a series of overlapping, scribbled lines.

Beth O'Donnell
Executive Director

AM:v