

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF AMERIGAS)
PARTNERS, L.P. AND AMERIGAS)
PROPANE, L.P. FOR APPROVAL OF THE)
ACQUISITION OF THE UTILITY ASSETS) CASE NO. 2013-00241
OF HERITAGE OPERATING, L.P. D/B/A)
BRIGHT'S PROPANE SERVICE, INC. AND)
FOR AUTHORITY TO ABANDON THE)
PIPELINE SYSTEM AND SERVE)
CUSTOMERS BY OTHER MEANS)

ORDER

On June 21, 2013, AmeriGas Partners, L.P. ("AmeriGas") and AmeriGas Propane, L.P. ("AmeriGas Propane") (collectively, the "Applicants") filed an application for approval pursuant to KRS 278.020(5) and KRS 278.020(6) to acquire the ownership and control of Heritage Operating, L.P. d/b/a Bright's Propane Service, Inc. ("Bright's Propane"). Bright's Propane owns and operates facilities used for the distribution of propane through a pipeline system in the Old Bridge Subdivision in Boyle County, Kentucky, and is a utility subject to the Commission's jurisdiction. The Applicants also requested authority to abandon utility service to the 52 customers currently served by Bright's Propane's pipeline system, and to serve all of these customers using individual propane tanks rather than through a gas pipeline system. There are no intervenors in this case.

On July 31, 2013, the Commission extended its review of this matter for an additional 60 days. On September 10, 2013, the Commission issued an Order directing AmeriGas or AmeriGas Propane to file verified direct testimony of an executive officer

addressing the statutory criteria of KRS 278.020(5) and (6) for approval of a utility transfer. The Order also stated that the request to abandon utility service would be transferred to a separate case for purposes of investigating whether there is a competitive market for propane service to customers in the Old Bridge Subdivision and, if there is, whether the existence of a competitive market is a sufficient basis to allow Bright's Propane to abandon service. An Order initiating that investigation was issued on September 10, 2013.¹ On September 20, 2013, AmeriGas and AmeriGas Propane filed the direct testimony of AmeriGas Propane's Vice President and Chief Operating Officer, R. Paul Grady.

BACKGROUND

On October 15, 2011, AmeriGas, Energy Transfer Partners, L.P. ("Energy Transfer"), Energy Transfer Partners CP, L.P., and Heritage ETC, L.P. entered into a Contribution and Redemption Agreement ("Purchase Agreement").² Under the Purchase Agreement, AmeriGas agreed to acquire the propane operations of Energy Transfer, including its subsidiaries that operated Bright's Propane. The Purchase Agreement closed on January 12, 2012 and AmeriGas became the owner of Bright's Propane.³

¹ Case No. 2013-00332, *An Investigation of the Proposed Abandonment by AmeriGas Partners, L.P. and AmeriGas Propane, L.P. of Utility Service by Bright's Propane Service, Inc. in Old Bridge Subdivision, Boyle County, Kentucky* (Ky. PSC. Sept. 10, 2013).

² Application, Exhibit C.

³ AmeriGas stated that "through inadvertence" it did not seek Commission approval prior to the acquisition of Bright's. Application at 4. On September 18, 2013, the Commission established a case to determine whether it is appropriate to assess a civil penalty, pursuant to KRS 278.990, for the apparent violations of KRS 278.020(5) and KRS 278.020(6) by AmeriGas and Bright's previous owner, Energy Transfer Partners, for the failure to acquire Commission approval prior to the transfer and acquisition of Bright's. See Case No. 2013-00337, *AmeriGas Partners, L.P., Amerigas Propane, L.P., and Energy Transfer Partners, L.P., Alleged Failure to Comply with KRS 278.020* (Ky. PSC. Sept. 18, 2013).

AmeriGas is a publicly traded Delaware master limited partnership.⁴ UGI Corporation, through its subsidiaries, AmeriGas, Inc. and AmeriGas Propane, is the sole General Partner and owns 26 percent of the partnership.⁵ An affiliate of Energy Transfer owns 32 percent of the partnership, and the remaining 42 percent is publically owned.⁶

AmeriGas operates the largest retail propane distribution business in the United States and distributes over one billion gallons of propane each year to over two million customers in all 50 states.⁷ It operates approximately 2,100 distribution locations.⁸ In 2012, AmeriGas had sales of \$2.9 billion and total assets of \$4.5 billion.⁹

AmeriGas Propane is responsible for managing the business interactions between AmeriGas and AmeriGas Propane.¹⁰ AmeriGas Propane will directly operate Bright's Propane as a result of this transfer.¹¹

Bright's Propane is the owner and operator of a gas distribution system, consisting of in-ground mains and service lines serving 52 customers in the Old Bridge Subdivision in Boyle County, Kentucky. In February 1991, the Commission determined

⁴ Application at 1.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 1-2.

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ Direct Testimony of R. Paul Grady at 1.

¹¹ Application at 4.

that Bright's Propane was a utility subject to our jurisdiction.¹² On February 27, 2008, the Commission approved Heritage Operating L.P.'s acquisition of Bright's Propane's utility assets.¹³

OVERVIEW OF THE TRANSACTION

AmeriGas acquired the propane operations of Energy Transfer through the Purchase Agreement, which was executed on October 15, 2011.¹⁴ The total consideration for the Purchase Agreement was approximately \$2.9 billion, which included cash, AmeriGas Partners Common Units valued at \$1.3 billion at the time of the execution of the Transaction, and the assumption of \$71 million in debt. The cash component of the consideration was \$1.5 billion.¹⁵ On January 12, 2012, AmeriGas concluded the acquisition of the Energy Transfer subsidiaries that operated Energy Transfer's propane distribution business, Heritage Propane.¹⁶

STATUTORY STANDARDS

The Applicants have requested Commission approval of AmeriGas's and AmeriGas Propane's acquisition of ownership and control of Bright's Propane pursuant to KRS 278.020(5) and KRS 278.020(6).

KRS 278.020(5) provides that:

¹² Case No. 1990-00091, Jurisdictional Status of Bright's Propane Service, Inc.'s Propane Distribution System (Ky. PSC Feb. 15, 1991).

¹³ Case No. 2007-00494, *Joint Application of Heritage Operating L.P. and Bright's Propane Service Inc. for Approval of Transfer and Acquisition of Assets and Certificates of Public Convenience* (Ky. PSC Feb. 27, 2008).

¹⁴ *Id.* at 3.

¹⁵ *Id.*

¹⁶ *Id.* at 4.

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. (Emphasis added).

KRS 278.020(6) provides in pertinent 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 The commission shall approve any proposed acquisition when it finds that the same is to be made in accordance with law, for a proper purpose and is consistent with the public interest (Emphasis added).

DISCUSSION

Since Bright's Propane is a utility as defined under KRS 278.010(3), it is subject to the provisions of KRS 278.020(5) and KRS 278.020(6), and Commission approval was required prior to AmeriGas's acquisition of Bright's Propane. As a result of AmeriGas's failure to seek Commission approval before its acquisition of Bright's Propane, the Commission issued a separate show cause Order to determine whether a civil penalty should be assessed against the Applicants and Energy Transfer, pursuant to KRS 278.990, for the apparent violations of KRS 278.020(5) and KRS 278.020(6).¹⁷ Therefore, this Order will address only whether the Applicants have met the appropriate standards set forth under KRS 278.020(5) and KRS 278.020(6) for acquiring a jurisdictional utility.

¹⁷ Case No. 2013-00337, *AmeriGas Partners, L.P., AmeriGas Propane, L.P., and Energy Transfer Partners, L.P. Alleged Failure to Comply with KRS 278.020* (Ky. PSC. Sept. 18, 2013).

FINANCIAL, TECHNICAL, AND MANAGERIAL ABILITY STANDARD

The Applicants have provided information to support their claim that they will have the ability to provide reasonable service if the Commission approves the transfer of Bright's Propane. The Applicants assert that AmeriGas has the financial, technical, and managerial ability to provide service to Bright's Propane's customers and thus meet the requirements of KRS 278.020(5). As noted earlier, AmeriGas is a publicly traded master limited partnership¹⁸ whose stock is traded on the New York Stock Exchange. It operates the largest retail propane distribution business in the United States.¹⁹ In 2012, it had total assets of \$4.5 billion and sales of \$2.9 billion.²⁰

After the transfer, Bright's Propane retained its six current employees, who each have operational and technical expertise and experience. These employees include Rick Harris, the District Manager and Commission contact for utility-related matters, with 21 years of experience in the propane business; Tommy Dishon, a Service Technician with 27 years of experience in the propane business who has training and experience in pipeline systems; Benny Day, a Bulk Driver with 18 years of experience in delivering bulk propane to the pipeline system; Kathy Caton, a Customer Service Representative with 10 years of experience; Sheri Ward, a Customer Service Representative with eight years of experience; and Heather Preston, a Customer Service Representative with 18 months of experience.²¹

¹⁸ Direct Testimony of R. Paul Grady at 1.

¹⁹ *Id.*

²⁰ Application at 1; See also Direct Testimony of R. Paul Grady at 1.

²¹ Application at 5; See also Exhibits E and F to the Application; See also Direct Testimony of R. Paul Grady at 2.

Based on this information, AmeriGas has shown that it possesses the "financial, technical, and managerial abilities to provide reasonable service," as required by KRS 278.020(5).

PUBLIC INTEREST STANDARD

The Applicants aver that their purpose in acquiring Bright's Propane is proper and that the transfer of Bright's Propane to AmeriGas is consistent with the public interest. The Applicants state that AmeriGas's purpose in acquiring Bright's Propane, to provide service to Bright's Propane's customers, is proper.²² The Applicants also assert that the transfer of Bright's Propane to AmeriGas has not had any adverse effect on Bright's Propane's customers.²³

FINDINGS

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that AmeriGas does have the financial ability to provide reasonable service to Bright's Propane's customers. AmeriGas has also demonstrated that it has the managerial and technical abilities necessary to provide reasonable service, and that both the level and quality of service currently received by Bright's Propane's customers will be maintained. The Commission further finds that the acquisition of Bright's Propane is made in accordance with the law, subject to the resolution of the issues being investigated in Case No. 2013-00337; does not violate any statutory prohibition; and is consistent with the public interest. Therefore, the Commission will approve AmeriGas's acquisition of Bright's Propane. AmeriGas will be required to file an adoption notice, pursuant to 807 KAR 5:011, Section 11, and also file a complete Gas

²² Direct Testimony of R. Paul Grady at 2.

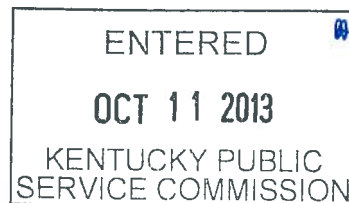
²³ Application at 6.

Cost Adjustment ("GCA") tariff because the GCA tariff currently on file for Bright's Propane, as adopted by Heritage Propane, does not contain the first page of that tariff.

IT IS THEREFORE ORDERED that:

1. The transfer of Bright's Propane from Energy Transfer to AmeriGas is approved.
2. Within 20 days of the date of this Order, AmeriGas shall file an adoption notice pursuant to 807 KAR 5:011, Section 11.
3. Within 20 days of the date of this Order, AmeriGas shall file with the Commission a complete GCA tariff.
4. Within 20 days of the date of this Order, AmeriGas shall file with the Commission the journal entries used to record the transfer. The acquisition shall be recorded in accordance with the Uniform System of Accounts prescribed by the Commission pursuant to KRS 278.220.
5. AmeriGas shall be responsible for filing the 2013 annual report for Bright's Propane as required by statute, and for complying with the requirements of Bright's Propane's GCA tariff.

By the Commission



ATTEST:



Executive Director

Case No. 2013-00241

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