

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF T. ROWE PRICE	)	
ASSOCIATES, INC. FOR A DECLARATORY	)	CASE NO.
ORDER REGARDING THE ACQUISITION OF	)	2015-00389
COMMON STOCK	)	

ORDER

On November 25, 2015, T. Rowe Price Associates, Inc. ("T. Rowe Price") filed an application requesting an Order declaring that prior Commission approval is not required under KRS 278.020(6) for the proposed increase, from less than 10 percent to less than 20 percent, in beneficial ownership by T. Rowe Price of the outstanding shares of voting securities of NiSource, Inc. ("NiSource"), the indirect parent of Columbia Gas of Kentucky, Inc. ("Columbia Gas").

There are no intervenors in this matter. One round of discovery was completed. A telephonic informal conference was held on February 11, 2016. On February 19, 2016, as a result of discussions at the informal conference, T. Rowe Price filed an acknowledgment of its commitment that, if its internal policy of passive investment changes and it seeks to acquire control or influence control of NiSource, T. Rowe Price will provide notice to the Commission before taking action and will file an application for approval pursuant to KRS 278.020(6). Also in its February 19, 2016 filing, T. Rowe Price waived its right to a hearing and requested that this case be submitted for a final adjudication based on the existing administrative record.

## OVERVIEW OF PROPOSED TRANSACTION

T. Rowe Price proposes to increase its beneficial ownership<sup>1</sup> from under 10 percent to less than 20 percent of the voting securities of NiSource (“Proposed Transaction”). T. Rowe Price is a Maryland corporation, registered with the U.S. Securities and Exchange Commission (“SEC”). It serves as an investment adviser to mutual funds, offshore funds, separate account clients, and common trust funds (collectively, “Advisory Clients”).<sup>2</sup> NiSource is an Indiana corporation that provides electric service in northern Indiana and natural gas service and natural gas transportation service in Indiana, Kentucky, Maryland, Massachusetts, Ohio, Pennsylvania, and Virginia.<sup>3</sup> Columbia Gas of Kentucky, Inc. (“Columbia Gas”), a wholly owned subsidiary of NiSource,<sup>4</sup> is a natural gas utility that is subject to the Commission’s jurisdiction.

T. Rowe Price has trading authority and/or voting power over NiSource shares that are held by T. Rowe Price’s Advisory Clients pursuant to investment management contracts with the Advisory Clients. In the aggregate, T. Rowe Price currently beneficially owns less than 10 percent of the total outstanding voting securities of NiSource; no single Advisory Client owns more than 5 percent of NiSource shares.<sup>5</sup> T.

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<sup>1</sup> As defined in Rule 13d-3 of the Securities Exchange Act of 1934, a beneficial owner owns a security through a contract or agreement and has the power to vote, and/or power to trade or influence trading decisions regarding the security, although the legal title to the security is held by another person.

<sup>2</sup> Application at paragraph 1.

<sup>3</sup> *Id.* at paragraph 7.

<sup>4</sup> *Id.* at paragraph 8.

<sup>5</sup> *Id.* at paragraph 4.

Rowe Price proposes to increase its beneficial ownership of NiSource, subject to the following conditions:

1. T. Rowe Price will not acquire beneficial ownership, in the aggregate, of equal to or more than 20 percent of the outstanding voting securities of NiSource.
2. T. Rowe Price will not acquire beneficial ownership of more than 10 percent of the outstanding voting securities of NiSource on behalf of any single Advisory Client.
3. T. Rowe Price will have beneficial ownership of the outstanding voting securities of NiSource in the ordinary course of business for investment purposes only without the purpose of changing or influencing control of NiSource.

#### DISCUSSION

In its application, T. Rower Price requests that the Commission enter an Order declaring that the Proposed Transaction is not subject to the Commission's approval under KRS 278.020(6). KRS 278.020(6) provides, in relevant part, that:

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.

The type of “control” at issue in this matter involves the ownership of voting securities. T. Rowe Price asserts that it can rebut the presumption in KRS 278.020(6) that control exists from ownership of 10 percent or more of a utility’s voting securities on the basis of external and internal limitations that prevent T. Rowe Price from exercising control over NiSource or Columbia Gas. T. Rowe Price points to SEC rules and orders from the Federal Energy Regulatory Commission (“FERC”) as external limitations, and the general investment policy adopted by T. Rowe Price and each T. Rowe Price-sponsored mutual fund as the internal limitations that demonstrate the proposed increase in beneficial ownership does not in fact confer control over the management and policies of NiSource or Columbia Gas.

T. Rowe Price explains that, pursuant to SEC rules, any person who beneficially owns 5 percent or more of voting securities must file either a Schedule 13G or Schedule 13D with the SEC, based in part on whether the party intends to act as a passive investor or whether the party intends to exercise control over the target company.<sup>6</sup> Additionally, if a person’s beneficial ownership equals or exceeds 20 percent of the outstanding securities, the beneficial owner is no longer eligible to file a Schedule 13G, because the SEC presumes there is intent to control and requires the beneficial owner to file a Schedule 13D.<sup>7</sup> The Schedule 13G filer acquires securities in the ordinary course of business and not with the purpose or effect of changing or influencing control.<sup>8</sup> A Schedule 13D filer acquires securities with the intention or purpose of

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<sup>6</sup> *Id.* at footnote 5; and 17 C.F.R. § 240.13d-1.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

controlling or influencing the target company's business.<sup>9</sup> In this case, T. Rowe Price states that it has been eligible to file a Schedule 13G, as it is a passive investor in NiSource, and that it will continue to be a beneficial owner eligible to file a Schedule 13G annually with the SEC after the Proposed Transaction is completed because it will remain a passive investor in NiSource.<sup>10</sup> T. Rowe Price has represented that it will not take any actions that would require it to file a Schedule 13D, such as changing its role from that of a passive investor in NiSource to that of an investor with intent to exercise control over NiSource, or of acquiring 20 percent or more of the NiSource stock.<sup>11</sup> Should T. Rowe Price invest for the purpose of exercising control over NiSource without adequate public disclosure in the form of a Schedule 13D filing, it would violate SEC rules and would be subject to SEC sanctions. Thus, T. Rowe Price argues, SEC rules effectively prevent T. Rowe Price from investing for the purpose of exercising control over NiSource.

Similarly, T. Rowe Price asserts that commitments set forth in an order entered by FERC prevent T. Rowe Price from exercising control over NiSource. On April 17, 2007, FERC issued an order ("FERC Order") granting T. Rowe Price, and its related entities, a blanket authorization to acquire voting securities of publicly traded utilities and utility holding companies, such as NiSource.<sup>12</sup> FERC incorporated certain commitments made by T. Rowe Price into the FERC Order, including a commitment

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<sup>9</sup> *Id.*

<sup>10</sup> Application at paragraphs 3 and 9(c); and T. Rowe Price's response to Commission Staff's First Request for Information ("Response to Staff's First Request"), Item 2.b.

<sup>11</sup> Application at paragraph 9; and T. Rowe Price's response to Staff's First Request, Item 2.b.

<sup>12</sup> 119 FERC ¶ 62,048 (April 17, 2007). The FERC Order was extended for three years in 2010 and again in 2013.

that T. Rowe Price will maintain its status as a beneficial owner eligible to file Schedule 13G. T. Rowe Price argues that, as applied to this case, this commitment precludes it from taking actions that indicate intent to exercise control over NiSource or Columbia Gas, such as appointing members to the NiSource or Columbia Gas boards of directors, engaging in day-to-day management, or launching a proxy contest to influence a transaction.<sup>13</sup> Because maintaining its eligibility as a Schedule 13G filer requires that T. Rowe Price act as a passive investor, T. Rowe Price argues the FERC Order, which includes the mandate to maintain Schedule 13G filer status, prevents T. Rowe Price from taking any actions with the intent or purpose of controlling NiSource or Columbia Gas.

Lastly, T. Rowe Price asserts that the general investment policy adopted by T. Rowe Price and T. Rowe Price-sponsored mutual funds prohibits investing in companies for the purpose of exercising management or control.<sup>14</sup> According to the general investment policy and procedures governing its beneficial ownership of securities, T. Rowe Price does not invest with the purpose or effect of changing or influencing the control of a company.<sup>15</sup> Further, in order to increase beneficial ownership above 9.99 percent of outstanding voting securities, approval must be obtained from T. Rowe Price's Equity Steering Committee, which includes full review by T. Rowe Price's legal department for compliance with relevant statutes, regulations, or provisions of company-specific documents. Additionally, the operating policies of T. Rowe Price-sponsored mutual funds include the provision that a fund may not invest in

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<sup>13</sup> Response to Staff's First Request, Item 2.a.

<sup>14</sup> *Id.* at Item 3.

<sup>15</sup> *Id.* at Item 3, Appendix C.

a company for the purpose of exercising management or control. Any change to the general investment policy or business practices would be subject to approval at three levels: T. Rowe Price's Equity Steering Committee, senior management, and the legal department.

In addition to the external and internal controls that limit T. Rowe Price's ability to exercise control over NiSource or Columbia Gas, T. Rowe Price filed with the Commission an acknowledgement of its commitment that, if its investment policy changes and it seeks to acquire control or influence control of NiSource or Columbia Gas, T. Rowe Price will provide notice to the Commission before taking action and will file an application for approval pursuant to KRS 278.020(6).

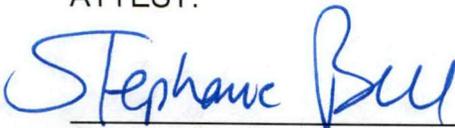
The Commission, having considered the record and being otherwise sufficiently advised, finds that the Proposed Transaction meets the statutory definition in KRS 278.020(6) of a rebuttable presumption that control exists by acquiring 10 percent or more of the voting securities of a utility. However, based upon T. Rowe Price's general investment policies and practices, compliance with SEC rules, commitments made in the FERC Order, and the commitment made to the Commission, T. Rowe Price's increase in beneficial ownership of NiSource to less than 20 percent of outstanding voting securities does not in fact confer actual control. For these reasons, the Commission further finds that no approval is required under KRS 278.020(6) for the proposal to acquire less than 20 percent of the outstanding shares of voting securities of securities of NiSource because T. Rowe Price has provided substantial evidence that rebutted the presumption of control, which is permitted under the statute.

IT IS THEREFORE ORDERED that T. Rowe Price's Application for a declaratory Order that its proposed increase in beneficial ownership of NiSource does not require Commission approval under KRS 278.020(6) is granted, subject to T. Rowe Price's written acknowledgement, filed within ten days of the date of this Order, accepting and agreeing to be bound by T. Rowe Price's commitment that, if its investment policy changes and it seeks to acquire control or influence control of NiSource or Columbia Gas, T. Rowe Price will provide notice to the Commission before taking action and will file an application for approval of the acquisition pursuant to KRS 278.020(6).

By the Commission

ENTERED 
MAR 14 2016
KENTUCKY PUBLIC SERVICE COMMISSION

ATTEST:

  
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