

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF KENTUCKY-OHIO )  
GAS ACQUISITION CORPORATION FOR ) CASE NO. 2000-545  
APPROVAL OF TRANSFER OF CONTROL )

O R D E R

On December 14, 2000, Kentucky-Ohio Gas Acquisition Corporation ("KOGAC") submitted an application for Commission approval of transfer of control of KOGAC to the current shareholder and President, Tim Sutherland. However, due to filing deficiencies, KOGAC's application was not considered filed until January 5, 2001.

KRS 278.020(4) prohibits any person from acquiring or transferring ownership or control of any utility under the jurisdiction of the Commission without having received prior approval. KRS 278.020(5) prohibits any entity from acquiring control of any utility under the jurisdiction of the Commission without prior approval. KOGAC is a Delaware corporation which owns, controls, operates, and manages facilities used for and in connection with the distribution, sale, and furnishing of natural or manufactured gas for the public for compensation for light, heat, power or other uses in Kentucky and, as such, is a utility subject to Commission jurisdiction pursuant to KRS 278.010(3)(b). The Commission finds that KRS 278.020(4) and (5) apply to the transaction proposed in the application and that Commission approval is required.

The requirements for determining if a transfer should be approved are also contained in KRS 278.020(4) and (5). KRS 278.020(4) provides for Commission

approval of a transfer if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service. KRS 278.020(5) provides for Commission approval of a transfer if it finds the transfer is to be made in accordance with the law, is for a proper purpose, and is consistent with the public interest.

KOGAC states that all the issued and outstanding stock of KOGAC is presently owned by two individuals -- H. Peter Meisinger 3,610,580 shares (80 percent) and Timothy Sutherland 896,193 shares (20 percent). KOGAC states that Mr. Meisinger passed away in June of 1998 and that his estate desires to sell, and that KOGAC wishes to purchase and redeem, Mr. Meisinger's 3,610,580 shares in KOGAC for \$1.00. In addition, KOGAC agrees to pay the Meisinger Estate the sum of \$600,000, \$400,000 upon the approval by the Commission of the transfer of stock and \$200,000 payable on October 1, 2001, in exchange for the Meisinger estate's pay off/down of \$4,654,297 of bank debt. This transaction will result in a change of control of KOGAC and leave the current President, Mr. Sutherland, as the sole shareholder of the corporation. A signed copy of the Purchase Agreement was not submitted to the Commission, but counsel for KOGAC states that the original Purchase Agreement, which is identical to the unsigned agreement filed with the Commission, has been signed and placed in escrow and will be filed with the Commission upon approval of the transfer.

KOGAC states that it will continue to provide the same services to its customers if the transfer of control is approved. It states that Mr. Meisinger was not involved in the day-to-day operations of the utility and that the positions of General Manager, President, Treasurer and Secretary will continue to be held by the same individuals.

Based on the evidence of record and being otherwise sufficiently advised, the Commission finds that the transaction will be made in accordance with law, for a proper purpose, and consistently with the public interest. The Commission further finds that the information submitted by KOGAC in the application establishes that KOGAC has the financial, technical, and managerial ability to provide reasonable service to its customers. Therefore, the request for approval to transfer control of KOGAC to Tim Sutherland is consistent with the requirements of KRS 278.020(4) and (5) and should be approved according to the terms in the Purchase Agreement filed with the Commission. Any modification or alteration of the terms set forth in the Purchase Agreement should be undertaken only with prior approval of the Commission.

During the pendency of this case, KOGAC was required by Staff to submit various accounting statements, journal entries and other accounting information. This Order should in no way be interpreted as approval of such journal entries and accounting information for purposes of accounting or rate-making treatment. Nor shall this Order be interpreted to constitute approval of any indebtedness that KOGAC may have incurred.

IT IS THEREFORE ORDERED that:

1. The proposed transfer of control of KOGAC, as well as the responsibility for its management, operation and maintenance, is approved as outlined in the application and Purchase Agreement filed in this proceeding. Any modification or alteration of the terms set forth in the Purchase Agreement shall be undertaken only with prior approval of the Commission.

2. The executed Purchase Agreement shall be filed with the Commission within 20 days of the date of this Order.

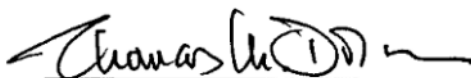
3. KOGAC shall notify the Commission within 20 days of the date of completion of the transfer or, in the alternative, KOGAC shall notify the Commission if the transfer does not occur.

4. The scope of Commission approval herein shall not be construed to include accounting or rate-making implications with regard to the accounting adjustments made by KOGAC; nor does it represent approval of any indebtedness that KOGAC may have incurred.

Done at Frankfort, Kentucky, this 6<sup>th</sup> day of March, 2001.

By the Commission

ATTEST:



Executive Director