

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF PNG)	
COMPANIES LLC, PEOPLES NATURAL)	
GAS COMPANY LLC, EQT)	
CORPORATION, DISTRIBUTION)	CASE NO. 2013-00163
HOLDCO, LLC AND EQUITABLE GAS)	
COMPANY, LLC FOR APPROVAL OF)	
ACQUISITION OF OWNERSHIP AND)	
CONTROL OF EQUITABLE GAS)	
COMPANY, LLC)	

ORDER

On May 9, 2013,¹ PNG Companies LLC (“PNG”), Peoples Natural Gas Company LLC (“Peoples”), EQT Corporation (“EQT”), Distribution Holdco, LLC (“Holdco”) and Equitable Gas Company, LLC (“Equitable”) (collectively, the “Applicants”) filed an application for approval pursuant to KRS 278.020(5) and KRS 278.020(6) for PNG to acquire the ownership and control of Equitable.² There were no intervenors in this case. On June 21, 2013, the Commission extended its review of this matter for an additional 60 days, and on June 26, 2013, there was an informal conference with the Applicants and Commission Staff. The Applicants also responded to Commission Staff’s discovery requests.

¹ The Application was received by the Commission on April 26, 2013, but contained filing deficiencies. The deficiencies were cured on May 9, 2013 and the Application was accepted for filing as of that date.

² PNG will purchase 100 percent of the limited liability company interests of Equitable from EQT and Holdco.

BACKGROUND

PNG's proposed acquisition of Equitable will occur, subject to the approval of the Commission and other regulatory agencies, under the terms of a Master Purchase Agreement ("MPA") dated December 19, 2012 by and among PNG, EQT and Holdco.³

PNG is a wholly owned subsidiary of LDC Holdings, LLC, which is a wholly owned subsidiary of LDC Funding LLC ("LDC Funding"), a limited liability company organized under the laws of Delaware.⁴ LDC Funding is a wholly owned subsidiary of SteelRiver Infrastructure Fund North America LP ("SRIFNA"), a limited partnership organized under the laws of Delaware. SRIFNA is an independent investment fund specializing in infrastructure assets. The general partner of SRIFNA is SteelRiver Infrastructure Associates LLC ("SteelRiver"), a limited liability company organized under the laws of Delaware.⁵

SteelRiver manages infrastructure investments throughout North America, with capital under management in excess of \$3.8 billion, and it manages and operates Peoples and Peoples TWP LLC (formerly T.W. Phillips Gas & Oil Co.) ("Peoples TWP"). Through its subsidiaries, SRIFNA has owned, and SteelRiver has managed, Peoples since 2010 and Peoples TWP since 2011.⁶ Peoples is a local gas distribution company regulated by the Pennsylvania Public Utility Commission ("PaPUC") and serving approximately 360,000 residential, commercial, and industrial customers in 16 counties in southwestern Pennsylvania. The Peoples system comprises 6,610 miles of natural

³ Application at 2.

⁴ *Id.* at 4.

⁵ *Id.*

⁶ *Id.* at 5.

gas distribution system, 428 miles of high-pressure intrastate transmission pipeline and 855 miles of gathering pipeline. Peoples TWP is a local gas distribution company regulated by the PaPUC and serving approximately 63,300 primarily residential customers in southwestern Pennsylvania. The utility, which previously operated as a family-owned business, has served southwestern Pennsylvania since 1896.⁷

EQT is a holding company for various energy related businesses and enterprises it owns directly or indirectly. EQT conducts its business through three business segments: EQT Production, EQT Midstream, and Distribution.⁸ The Distribution business segment, through Equitable, distributes and sells natural gas to residential, commercial, and industrial customers in eastern Kentucky, north central West Virginia, and southwestern Pennsylvania; and operates a small gathering system in Pennsylvania. Equitable is regulated by this Commission, the Public Service Commission of West Virginia and the PaPUC.⁹

Equitable operates what is referred to as a “farm tap” system and it serves approximately 3,300 farm tap customers along the Kentucky West Virginia Gas (“Kentucky West”)¹⁰ pipeline system in Floyd, Johnson, Knott, Lawrence, Leslie, Letcher, Magoffin, Martin, Perry, and Pike counties in eastern Kentucky, pursuant to KRS 278.485 and 807 KAR 5:026, and through its farm tap tariff on file with the Commission. In 2012, Equitable sold approximately 186,000 Mcf of gas to its Kentucky

⁷ *Id.*

⁸ *Id.* at 6.

⁹ *Id.* at 7.

¹⁰ Kentucky West Virginia Gas is an assumed name that has been adopted by EQT Gathering, LLC pursuant to a Certificate of Assumed Name filed with the Kentucky Secretary of State in June 2011.

customers. The gas that Equitable delivers to its Kentucky customers is not its own production but is purchased from third-party suppliers through EQT Energy, LLC (“EQT Energy”).¹¹ Equitable’s primary Kentucky assets consist of a contract with EQT Energy, contracts with its farm tap customers, and customer meters.¹²

OVERVIEW OF THE TRANSACTION

The Proposed Transaction incorporates a number of components, including PNG’s acquisition of Equitable.¹³ At or soon after the acquisition’s closing, (i) Equitable’s Pennsylvania assets will be merged with and into Peoples by reason of the merger of Equitable into Peoples; (ii) Equitable’s West Virginia assets will be contributed to a new limited liability company that is expected to be known as Peoples WV LLC (“Peoples WV”); and (iii) Equitable’s Kentucky assets will be contributed to a new stand-alone entity, affiliated with Peoples, to be formally organized and expected to be known as Peoples KY LLC (“Peoples KY”).¹⁴ Certain intellectual property and software license rights that relate to Equitable’s general operations, including operations in Kentucky, will also be transferred.¹⁵ After the Proposed Transaction, PNG will adopt the current Equitable tariff and will make the required quarterly gas cost adjustment filings in the future.¹⁶

¹¹ Application at 7, Response to Staff’s Initial Request for Information, Item 1.

¹² Application at 7.

¹³ *Id.* at 8.

¹⁴ Prefiled Direct Testimony of Morgan K. O’Brien at 3.

¹⁵ *Id.*

¹⁶ *Id.* at 6.

The consideration for the Proposed Transaction includes cash, the transfer of certain Pennsylvania assets from Peoples to EQT and/or its affiliated companies, and the transfer of certain Pennsylvania and West Virginia assets between EQT and its affiliated companies and Equitable. The cash component of the consideration is a base price of \$720 million, as adjusted pursuant to the terms of the MPA.¹⁷

STATUTORY STANDARDS

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

KRS 278.020(5) provides that:

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].

Both of the above provisions speak to the obligation of a "utility" to obtain Commission approval prior to any transfer or acquisition. Under KRS 278.010(3), a

¹⁷ *Id.* at 9.

“utility” is defined as “any person except . . . a city, who owns, controls, operates, or manages any facility used or to be used for or in connection with:

(b) The production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power, or other uses”

Pursuant to KRS 278.040(2), “[t]he jurisdiction of the Commission extends to all utilities in the state, and the Commission has exclusive jurisdiction over the regulation of rates and service of utilities.” In addition to those persons whose operations satisfy the statutory definition of “utility,” there are persons who are not within that definition but who are subject to limited Commission regulation pursuant to another statutory provision.

With respect to gas pipeline systems such as the one operated by Equitable, KRS 278.485 provides in pertinent part:

Every gas pipeline company obtaining gas from producing wells located within this state, upon the request of the owner of the property on or over which any producing well or gas gathering pipeline is located or the owner of real estate whose property and point of desired service is located within one-half (1/2) air-mile of said company’s producing gas well or gas gathering pipeline, shall furnish gas service to such owner and applicant, subject to and upon the following terms, conditions, and provisions

A gas pipeline company operating within these parameters is not a “utility” as defined in KRS 278.010(3), because it has not dedicated its facilities to serve the public up to the extent of its capacity. Rather, such a company is providing gas service only to those within one-half air mile of a producing well or a gas gathering pipeline and is doing so only because the statute requires it to provide that service. A gas pipeline company that falls with the parameters of KRS 278.485 is referred to as a “farm tap

company” or a company that provides “farm tap service.” A farm tap system is not required to provide any minimum level of service.¹⁸ The Commission’s jurisdiction is limited to regulating the rates charged and ensuring the safety of the service lines, gas regulators, gas meters, and the connection with the gas producing well or pipeline. A farm tap company is not required to maintain any fixed or specified gas pressure and it has the right to abandon any gas well or any gathering pipeline and may remove such abandoned pipeline with no obligation to continue providing gas service. Unlike customers of a jurisdictional utility, customers receiving farm tap service from an abandoned well or pipeline have no right to receive future service.

DISCUSSION

If Equitable were a utility under KRS 278.010(3), it would be subject to the provisions of KRS 278.020(5) and KRS 278.020(6) and Commission approval would be required prior to PNG’s acquiring Equitable. Equitable’s operations in Kentucky, however, are limited to supplying “farm-tap service” under KRS 278.485, and Commission approval is not required prior to its acquisition by PNG. Because the overall scope of the Proposed Transaction involves multiple entities and multiple states, with the transfer of Equitable to PNG being but one component, the Applicants have provided sufficient information for a determination to be made as if Equitable were a utility as defined under KRS 278.010(3).

Equitable began operating as a farm tap company in 1958, when the Commission authorized Kentucky West to transfer its present and future retail domestic

¹⁸ Pursuant to KRS 278.010(14), utilities must provide adequate service, defined as “having sufficient capacity to meet the maximum estimated requirements of the customer to be served”

customers to Equitable.¹⁹ In Case No. 92-168,²⁰ the Commission initiated an investigation to determine whether Equitable should continue to be considered a supplier of “farm tap service.” As set forth in its filed tariff at that time, Equitable provided limited service: “[i]t served only rural service connections in close proximity to Kentucky West’s system [and] service was not guaranteed.”²¹ Also in its filed tariff, Equitable could “abandon service to any customer served from any line or well which Kentucky West abandons or discontinues Equitable’s customers were responsible for supplying, maintaining, and operating the necessary regulator and service line.”²² In 1993, Equitable supplied natural gas to 4,296 customers in eastern Kentucky, but aside from gas meters and gas meter installations, Equitable had no gas distribution facilities in Kentucky and functioned primarily as the distribution agent for Kentucky West, a natural gas producer and interstate pipeline. Equitable and Kentucky West were both subsidiaries of Equitable Resources, Incorporated.²³ Equitable served its customers directly off Kentucky West’s pipelines by tapping into Kentucky West’s gathering lines and installing gas meters.²⁴ The Commission concluded its investigation in Case No. 92-168 by determining that Equitable’s actions were authorized by and consistent with

¹⁹ Case No. 3563, *Joint Application of Kentucky West Virginia Gas Company and Equitable Gas Company for a Certificate of Public Convenience and Necessity Authorizing the Former to Transfer Its Retail Domestic Customers to the Latter; and Application by Equitable Gas Company for Disclaimer of Jurisdiction Over or in the Alternative for Approval of the Issuance of Securities* (Ky. PSC Dec. 1, 1958). In granting such authorization, the Commission noted that its action would “result in Kentucky West eliminating its retail distribution of natural gas to domestic customers.”

²⁰ Case No. 92-168, *An Investigation into Equitable Gas Company’s Status as a Provider of Farm Tap Service* (Ky. PSC Feb. 8, 1993).

²¹ *Id.* at 2.

²² *Id.*

²³ *Id.* at 1.

²⁴ *Id.*

the Commission's 1958 Order, and in keeping with Equitable's designation as a supplier of farm tap service.

Equitable's current operation is almost identical to its operation described in the Commission's Order in Case No. 92-168, although the number of farm tap customers has decreased from 4,296 in 1993 to approximately 3,300 at present. As in 1993, Equitable does not serve any customers it is not required to serve pursuant to KRS 278.485,²⁵ and its Kentucky customers are still sold and delivered gas along Kentucky West's well connection and gathering system in eastern Kentucky.²⁶ The gas that Equitable delivers to its Kentucky customers, as was the case in 1993, is not its own production but is purchased from third-party suppliers through EQT Energy.²⁷

The Applicants assert that after the proposed acquisition, PNG will have the financial, managerial, and technical ability to enable the new Kentucky company, Peoples KY, to continue to provide reasonable service to its customers, as required if the Commission were to consider Equitable to be a utility and the proposed acquisition were thereby subject to KRS 278.020(5) and KRS 278.020(6). The Applicants state that PNG has a proven record of accomplishment operating Peoples and Peoples TWP, two Pennsylvania gas local distribution companies with a combined 420,000 customers,²⁸

²⁵ Equitable Gas Company, LLC's Response to Commission Staff's Initial Request for Information, Item 4.

²⁶ *Id.*, Item 7. At Sheet No. 2 of its tariff, Equitable states that the point of delivery to its customers is "[a]t connection along Kentucky West Virginia Gas Company's well connection and gathering system in Eastern Kentucky included in Equitable Gas's service area."

²⁷ *Id.* "Gas delivered pursuant to this tariff is from pipelines owned and operated by Equitable Gas Company's supplier and all gas sold hereunder is made available by said supplier."

²⁸ Direct Testimony of Fredrick K. Dalena at 6.

and PNG and its management are focused on operating regulated natural gas distribution businesses.²⁹

The Applicants further state that PNG plans to retain Equitable employees in Kentucky and that technical fitness will be enhanced by providing the Kentucky business with access to knowledgeable and experienced individuals at both Peoples and Peoples TWP with relevant industry backgrounds;³⁰ that Peoples KY will have a financially strong owner with access to local and global financial resources, technical expertise, and the ability to obtain overall efficiencies of scale that will ultimately benefit Peoples KY, its business, and its customers;³¹ and that PNG's past performance has demonstrated increased responsiveness to customers and overall increased customer satisfaction.³²

The Applicants assert that PNG has arranged for financing of the cash purchase price, and that PNG and its investors will provide Peoples KY sufficient capital to operate, maintain and, where possible, expand Peoples KY's Kentucky business. The Applicants state that the management team and employees that will be in place for Peoples KY have the requisite knowledge, experience, and resources to operate and manage Equitable's Kentucky assets and to provide reasonable customer service. Testimony and the Application demonstrate that the acquisition of Equitable by PNG satisfies the requirements of KRS 278.020(5) and KRS 278.020(6).³³

²⁹ Direct Testimony of Morgan K. O'Brien at 8.

³⁰ *Id.* at 9.

³¹ *Id.*

³² *Id.* at 10.

³³ *Id.* at 14.

FINDINGS

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that there is sufficient evidence to support the position that PNG will have the financial ability to provide reasonable service to Equitable's customers. PNG has 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 Equitable's customers will be maintained. The proposed transaction will be made in accordance with the law, does not violate any statutory prohibition, and is consistent with the public interest.

Although there is sufficient evidence to find that the requirements of KRS 278.020(5) and KRS 278.020(6) have been met by the Applicants, the Commission finds that Equitable's status as a farm tap company has not changed in its structure or operation. Therefore, the Commission finds that PNG's acquisition of Equitable does not require Commission approval under KRS 278.020(5) or KRS 278.020(6).

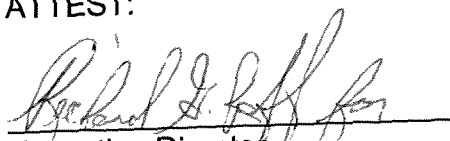
IT IS THEREFORE ORDERED that:

1. Equitable is a farm tap company pursuant to KRS 278.485 and not a utility as defined in KRS 278.010(3).
2. PNG's proposed acquisition of Equitable does not require Commission approval pursuant to KRS 278.020(5) or KRS 278.020(6).
3. This case shall be dismissed and removed from the Commission's docket.

By the Commission

ENTERED
SEP 03 2013
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2013-00163

Honorable Francis J Mellen, Jr.
Wyatt, Tarrant & Combs, LLP
500 West Jefferson Street
Suite 2800
Louisville, KENTUCKY 40202-2898

Honorable Robert M Watt, III
Attorney At Law
STOLL KEENON OGDEN PLLC
300 West Vine Street
Suite 2100
Lexington, KENTUCKY 40507-1801