

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE JOINT APPLICATION OF PNG)	
COMPANIES LLC, DRAKE)	
MERGER SUB INC., AND DELTA)	CASE NO. 2017-00125
NATURAL GAS COMPANY, INC.)	
FOR APPROVAL OF AN)	
ACQUISITION OF OWNERSHIP)	
AND CONTROL OF DELTA)	
NATURAL GAS COMPANY, INC.)	

POST HEARING BRIEF

PNG Companies LLC (“PNG”), Drake Merger Sub Inc. (“Drake”), SteelRiver Infrastructure Fund North America LP (“SRIFNA”) and SteelRiver LDC Investments LP (“SRLDCI”) (“SRIFNA” and “SRLDCI,” collectively, “SteelRiver”)¹ respectfully submit the following Post Hearing Brief, which follows the Public Hearing of this matter on June 8, 2017.

This matter involves the acquisition of ownership and control of Delta Natural Gas Company, Inc. (“Delta”) directly by PNG, and indirectly by SRIFNA and SRLDCI (the “Proposed Transaction”). As set forth more fully herein, the Acquiring Applicants satisfy the statutory requirements of KRS 278.020(6) and (7) in that they possess the financial, technical and managerial abilities to provide reasonable service to Delta’s customers, and the Proposed Transaction will be made in accordance with the law, for a proper purpose, and will be consistent with the public interest.

¹ PNG, Drake, SRIFNA, and SRLDCI may be referred to collectively herein as the “Acquiring Applicants.”

In 2013, the Commission ruled that there was sufficient evidence to find that PNG satisfied those statutory requirements in connection with PNG's acquisition of Equitable Gas Company, LLC ("Equitable") from EQT Corporation.² The Commission should find likewise in this matter.

I. Procedural History.

On March 16, 2017, PNG, Drake and Delta filed a Joint Application requesting approval of the Proposed Transaction, attaching thereto several exhibits including the written testimony of Morgan K. O'Brien (President and CEO of PNG), Preston D. Poljak (Senior Vice President and CFO of PNG), and Glenn R. Jennings (President and CEO of Delta). On May 5, 2017, PNG, Drake and Delta filed a Motion for Leave to File an Amended Joint Application for the purpose of including as parties the SteelRiver entities because, while the SteelRiver entities would have no direct control over the day-to-day operations of Delta if the Proposed Transaction were approved, they may have indirect control as that term is used in KRS 278.020(7). With that filing, PNG, Drake, and Delta submitted a proposed Amended Joint Application and the written testimony of John McGuire (Chief Legal Officer of SteelRiver).

On May 16, 2017, the Commission granted to Motion for Leave to Amend and deemed the Amended Joint Application, along with the written testimony of Mr. McGuire, filed as of May 5, 2017.

² The Commission also found that PNG's acquisition of Equitable did not require approval because Equitable was a farm tap company pursuant to KRS 278.485 and not a utility as defined in KRS 278.010(3). *Joint Application of PNG Companies, LLC, Peoples Natural Gas Company, LLC, EQT Corporation, Distribution Holdco, LLC and Equitable Gas Company, LLC For Approval of Acquisition of Ownership and Control of Equitable Gas Company, LLC*, Case No. 2013-00163, Order Entered on September 3, 2013, p. 11.

The Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, filed a Motion to Intervene in this matter, which the Commission granted on March 22, 2017.

During this proceeding, the Attorney General's Office and the Commission's Staff have submitted numerous data requests to the Joint Applicants, to which timely responses have been given.

The Public Hearing of this matter was held before the Commission on June 8, 2017. The Commission noted that notice of the hearing had been properly given and filed in the record of this case. After providing the opportunity for public comment, of which there was none, the Commission heard testimony from Glenn R. Jennings (Delta), John Brown (Delta), Matthew Wesolosky (Delta), Morgan K. O'Brien (PNG and Drake), Preston D. Poljak (PNG and Drake), and John McGuire (SteelRiver), in which the witnesses adopted their previously filed written testimony and responses to data requests as their direct testimony in this matter. The Attorney General's Office and Commission Staff were present and cross-examined these witnesses as they deemed necessary. These witnesses also responded to questions posed directly by the Chairman and Vice Chairman of the Commission.

At the conclusion of the Public Hearing, the Commission offered the Joint Applicants the opportunity to file post hearing briefs, with the filing deadline being June 22, 2017.

II. The Proposed Transaction.

As set forth in the Joint Application, the Amended Joint Application, and the testimony of various witnesses, the proposed acquisition of Delta by PNG will occur

under the terms of the Agreement and Plan of Merger by and among PNG, Drake, and Delta, dated as of February 20, 2017 (the “APM”), which was attached to the Joint Application as Exhibit A.³ Under the terms of the APM and upon closing of the Proposed Transaction (the “Closing”), Drake will be merged with and into Delta, the separate existence of Drake will thereupon cease, Delta will be the surviving entity in the merger, and Delta will become, as a result of the merger, a direct, wholly-owned subsidiary of PNG.⁴ The consideration for the Proposed Transaction will be the cash payment by PNG to Delta’s shareholders of Thirty and 50/100ths Dollars (\$30.50) for each issued and outstanding share of Delta’s Common Stock.⁵

PNG made specific commitments to Delta in Section 1.7 of the APM regarding: (a) Delta’s headquarters in Winchester, Kentucky; (b) Delta’s level of community involvement, charitable contributions, low income funding, and economic development efforts in Delta’s current operating areas; (c) Delta’s company name and logo; (d) providing certain compensation, benefits, and severance protections to non-executive employees of Delta; (e) offering to Delta’s five current executive officers positions with the company following the Closing of the Proposed Transaction; and (f) the appointment of an independent director, approved by Delta’s current Board of Directors, to Delta’s Board of Directors post-Closing.⁶

³ Joint Application, pp. 1-2; Amended Joint Application, pp. 2; Direct Testimony of Morgan K. O’Brien (“O’Brien Direct”), p. 3; Direct Testimony of Preston D. Poljak (“Poljak Direct”), p. 4.

⁴ Joint Application, p. 2; Amended Joint Application, p. 2; O’Brien Direct, p. 3; Poljak Direct, pp. 4-5.

⁵ Poljak Direct, p. 5.

⁶ Joint Application, p. 6; APM, Section 1.7.

III. The Proposed Transaction Satisfies the Requirements of KRS 278.020(6) and (7) and Should be Approved by the Commission.

KRS 278.020(6) provides that no acquisition or transfer of ownership or control of any utility is permitted without Commission approval and that “The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.” Additionally, in a transfer of control case such as this, approval of the Commission also requires a finding that the proposed acquisition is to be made in accordance with the law, for a proper purpose, and is consistent with the public interest. KRS 278.020(7).

A. The Acquiring Applicants Have the Financial, Technical, and Managerial Abilities to Continue to Provide Reasonable Service to Delta’s Customers After the Closing of the Proposed Transaction.

As stated by Mr. O’Brien during the Public Hearing while referencing PNG, “All we are are utilities. That’s all we are. We get it and we understand it.”⁷ Mr. O’Brien’s statement is fully supported by the fact that PNG, and its subsidiaries/affiliates in Pennsylvania, West Virginia, and Kentucky, serve a total of approximately 700,000 natural gas customers in those regions.⁸

(i) Financial Ability.

First, as to PNG’s financial ability, it will finance the cash purchase price through a combination of operating cash flow, borrowings under its existing credit facilities (which now total \$400 Million), and equity contributions.⁹ Moving forward, PNG has a strong track record of accessing capital from financial markets, has raised significant

⁷ Video Record (“VR”), 06/08/17, Morgan K. O’Brien Cross-Examination (“O’Brien Cross”), 11:07:00 – 11:07:09.

⁸ O’Brien Direct, p. 1; Poljak Direct, p. 2.

⁹ Poljak Direct, p. 5; VR, 06/08/17, Preston D. Poljak Cross-Examination (“Poljak Cross”), 11:57:16 – 11:57:20.

amounts of long-term debt capital at cost effective rates, and maintains revolving credit agreements with national and local banks to support working capital and capital expenditure needs.¹⁰ PNG is also a creditworthy entity with investment grade ratings by both Moody's and Standard & Poor's.¹¹

Further, should the Commission approve the Proposed Transaction, Delta, as part of the PNG family, would have access to additional capital through SteelRiver.¹² SteelRiver manages infrastructure investments throughout North America in funds with total committed capital of \$2.2 Billion.¹³ SteelRiver's investors seek stable, steady and fair returns on infrastructure investments to be held for a significant period of time.¹⁴ In short, while SteelRiver will not control the day-to-day operations of Delta if the Proposed Transaction is approved¹⁵, its investment in PNG, and thereby in PNG's subsidiaries and affiliates, is a long-term investment.¹⁶

(ii) Technical Ability.

As stated at the Public Hearing, if the Proposed Transaction is approved, the day-to-day operations of Delta would be managed at the PNG/Delta level, without interference or involvement from SteelRiver.¹⁷ PNG respectfully submits that it possesses the technical ability to continue to provide reasonable service to Delta's customers. As stated previously, PNG, and its subsidiaries and affiliates, provide

¹⁰ Poljak Direct, p. 7.

¹¹ Poljak Direct, p. 7.

¹² O'Brien Direct, p. 9.

¹³ Direct Testimony of John McGuire ("McGuire Direct"), p. 2.

¹⁴ McGuire Direct, p. 3.

¹⁵ McGuire Direct, p. 4; VR, 06/08/17, John McGuire Cross-Examination ("McGuire Cross"), 12:09:03 – 12:09:54.

¹⁶ VR, 06/08/17, McGuire Cross, 12:07:04 – 12:08:36 and 12:11:38 – 12:11:55

¹⁷ VR, 06/08/17, McGuire Cross, 12:09:03 – 12:09:54.

natural gas services to approximately 700,000 customers in Pennsylvania, West Virginia and Kentucky.

PNG's subsidiaries include Peoples Natural Gas Company, LLC ("Peoples"), a local gas distribution company serving areas on Pennsylvania.¹⁸ In 2011, Peoples TWP, LLC, a Pennsylvania limited liability company, was acquired and is now an affiliate of PNG.¹⁹ Peoples and Peoples TWP currently provide safe and reliable natural gas distribution services to approximately 690,000 homes and businesses in 18 counties in southwestern Pennsylvania.²⁰ Both Peoples and Peoples TWP are regulated by the Pennsylvania Public Utility Commission ("PaPUC").²¹

In 2013, PNG acquired 100% of the limited liability company interests of Equitable Gas Company, LLC ("Equitable") from EQT Corporation, which included farm tap customers in Kentucky and natural gas assets in West Virginia.²² PNG contributed Equitable's Kentucky assets to an entity now known as Peoples Gas KY LLC ("Peoples KY"), that currently operates a farm tap system with approximately 2,950 customers in 10 counties in eastern Kentucky.²³ Peoples WV LLC ("Peoples WV"), which houses the former Equitable West Virginia natural gas assets, serves approximately 13,000 customers in northern West Virginia and is regulated by the Public Service Commission of West Virginia ("WVPSC").²⁴

¹⁸ O'Brien Direct, p. 1; Poljak Direct, p. 2.

¹⁹ O'Brien Direct, p. 1; Poljak Direct, p. 3.

²⁰ O'Brien Direct, p. 1; Poljak Direct, p. 3.

²¹ O'Brien Direct, p. 1; Poljak Direct, p. 3.

²² O'Brien Direct, pp. 1-2; Poljak Direct, p. 3.

²³ O'Brien Direct, p. 2; Poljak Direct, p. 3.

²⁴ O'Brien Direct, p. 2; Poljak Direct, pp. 3-4.

The natural gas system of the Peoples Utilities (as described above) comprises approximately 13,000 miles of natural gas distribution systems, 160 miles of high pressure intrastate transmission pipeline and 1,500 miles of gathering pipeline.²⁵

PNG is currently making annual investments of more than \$100 Million in modernizing the pipeline system of the Peoples Utilities by accelerating the replacement of high risk pipe.²⁶ In this respect, PNG will continue Delta's pipeline replacement program and will also conduct a complete evaluation of Delta's pipeline system with the intent to increase the amount of pipe being replaced and to accelerate the replacement of high risk pipe, including Alydyl-A pipe.²⁷ This would be made possible by the greatly increased access to capital of Delta resulting from the Proposed Transaction.²⁸ If PNG believes its intention in this regard can come to fruition, it will file a revised pipeline replacement program with the Commission in the future.²⁹

Similarly, PNG has implemented a robust first-in-class safety program that has driven the company's safety performance to the top quartile as found by the American Gas Association.³⁰

PNG is also customer focused, having made significant investments in Information Technology.³¹ Peoples Service Company, a subsidiary of PNG, houses a highly skilled and trained state of the art customer service center that provides 24/7 access to all customers as well as providing customers the ability to self-serve in paying

²⁵ O'Brien Direct, p. 2; Poljak Direct, p. 4.

²⁶ O'Brien Direct, p. 7.

²⁷ O'Brien Direct, pp. 12-13.

²⁸ VR, 06/08/17, O'Brien Cross, 10:28:01 – 10:29:24.

²⁹ O'Brien Direct, p. 13.

³⁰ O'Brien Direct, p. 7.

³¹ O'Brien Direct, p. 6.

their bills, seeking billing information, and placing service orders on-line through the company's secured webpage.³²

As shown above, PNG and its management are exclusively focused on operating natural gas distribution businesses and offering exceptional customer service.³³ Through its other acquisitions, PNG has had a positive impact on customer service, safety of the customer and employees, and has improved the reliability of the system with significant capital investments in pipe replacement.³⁴ For these reasons, it possesses the technical ability to necessary to satisfy KRS 278.020(6).

(iii) Managerial Ability.

Should the Commission approve the Proposed Transaction, Delta would be managed by a Peoples Utilities management team with extensive knowledge, experience and skill in successfully operating large regulated gas distribution operations.³⁵ The Peoples Utilities have a track record of working with the PaPUC and WWPSC to align its business plan with the priorities of each state.³⁶ PNG has committed to taking this same approach in Kentucky with Delta.³⁷

Mr. O'Brien will have direct oversight responsibilities of Delta should the Proposed Transaction be approved.³⁸ Mr. O'Brien began his career in public accounting as a CPA, then spent 19 years with Duquesne Light Company, which transmits and distributes electric energy to residential and commercial customers in southwestern Pennsylvania, with the last 8 ½ years serving as the President and CEO

³² O'Brien Direct, p. 6.

³³ O'Brien Direct, p. 10.

³⁴ Poljak Direct, p. 6.

³⁵ O'Brien Direct, p. 9.

³⁶ O'Brien Direct, p. 11.

³⁷ O'Brien Direct, p. 11.

³⁸ O'Brien Direct, p. 13.

of that company.³⁹ For the past 7 ½ years he has served as the President and CEO of PNG, with his duties encompassing overall management and performance of the Peoples Utilities, strategic planning, and overseeing the modernization of systems to meet the needs of customers and the regions served.⁴⁰

Other management personnel include Joseph A. Gregorini who serves as the Senior Vice President and Chief Operating Officer for the Peoples Utilities.⁴¹ Mr. Gregorini began his career with PNG in natural gas distribution in 1987.⁴² Lynda W. Petrichevich serves as Vice President, Regulatory Affairs and is the executive with primary, day-to-day rate and regulatory affairs responsibilities, including serving as the “go-to” person for the PaPUC, the WVPSC and this Commission for the Peoples Utilities.⁴³ Mrs. Petrichevich has a broad background in gas utility functions and extensive experience in natural gas regulatory matters.⁴⁴

PNG and its management team possesses the managerial abilities to continue to provide reasonable service to Delta’s customers and therefore PNG satisfies this requirement under KRS 278.020(6).

B. The Proposed Transaction is Being Made in Accordance with the Law.

The Proposed Transaction has been approved by the Board of Managers of PNG, by the Board of Directors of Drake, and by the Board of Directors of Delta.⁴⁵ On

³⁹ O’Brien Direct, p. 4.

⁴⁰ O’Brien Direct, p. 4.

⁴¹ O’Brien Direct, p. 13.

⁴² O’Brien Direct, p. 13.

⁴³ O’Brien Direct, p. 13.

⁴⁴ O’Brien Direct, p. 13.

⁴⁵ Joint Application, p. 10.

June 1, 2017, a special meeting of Delta's shareholders was held at which the shareholders voted on and approved the Proposed Transaction.⁴⁶

Likewise, the Joint Applicants submitted the necessary pre-merger notifications to the federal government under the Hart-Scott-Rodino Antitrust Improvement Act ("HSR Act").⁴⁷ The waiting period under the HSR Act expired on March 16, 2017.⁴⁸

Therefore, the only additional approval needed of the Proposed Transaction is that of the Commission. For these reasons, the Proposed Transaction is being made in accordance with the law, as required under KRS 278.020(7).

C. The Proposed Transaction is for a Proper Purpose.

The Proposed Transaction will result in Delta becoming a part of a larger system of infrastructure assets within PNG, which possesses the size and resources to provide support to Delta to enable it to continue to provide reasonable service to Delta's customers, and the experience and expertise to succeed in the future.⁴⁹ In short, Delta is a perfect fit for PNG's business philosophy and strategy as a regulated public utility in the natural gas business.⁵⁰ PNG's core values of safety, customer commitment, trust and community will be adopted by Delta should the Proposed Transaction be approved, and these core values will guide PNG as it acquires and operates Delta's business.⁵¹

Additionally, PNG already has a presence in the Appalachian Basin through its management and operation of the Peoples Utilities and the acquisition of Delta is highly complementary to the long-term strategic business plan of the Peoples Utilities.⁵²

⁴⁶ VR, 6/08/17, Glenn Jennings Cross-Examination ("Jennings Cross"), 9:12:02 – 9:12:30.

⁴⁷ Poljak Direct, p. 5.

⁴⁸ Poljak Direct, p. 5; VR, 06/08/17, McGuire Cross, 12:05:44 – 12:06:09.

⁴⁹ Joint Application, p. 10.

⁵⁰ Poljak Direct, p. 6.

⁵¹ O'Brien Direct, p. 5.

⁵² Poljak Direct, p. 6.

Likewise, the Proposed Transaction is in the “wheelhouse” of the types of acquisitions and investments SteelRiver pursues, those being acquisitions of entities with regulated characteristics in areas such as Kentucky, long term ownership/investment, and long term value creation.⁵³

The Acquiring Applicants respectfully submit that for these reasons the Proposed Transaction is for a proper purpose under KRS 278.020(7).

D. The Proposed Transaction is Consistent with the Public Interest.

If the Proposed Transaction is approved by the Commission, the ownership and control of Delta would be vested in a substantial, financially strong and well-managed company.⁵⁴ PNG intends to be a long-term owner of Delta⁵⁵, and its financial, technical, and managerial abilities will enhance Delta’s performance moving into the future, all of which serve the public interest.⁵⁶

PNG has made specific commitments to Delta in Section 1.7 of the APM in which Delta’s name and logo will continue to be used; Delta’s headquarters will remain in Winchester, Kentucky; Delta’s community involvement, charitable contributions, low income funding, and economic development efforts will be continued; certain compensation, benefits, and severance protections to Delta’s non-executive employees; offering Delta’s five executive officers positions with Delta post-closing; and the appointment of an independent director to Delta’s Board.⁵⁷ PNG’s commitment to maintaining Delta’s local presence is certainly in the public interest for those in Delta’s service area.

⁵³ VR, 06/08/17, McGuire Cross, 12:07:40 – 12:08:36.

⁵⁴ Joint Application, p. 11; Poljak Direct, p. 8.

⁵⁵ Joint Application, p. 11; Poljak Direct, p.8.

⁵⁶ See Section III (A)(i), (ii), and (iii) *supra*.

⁵⁷ Joint Application, p. 6; APM Section 1.7.

Additionally, PNG will invest significant sums in Delta's IT systems, will provide the level of capital necessary to ensure that Delta's pipeline replacement is continued (and potentially accelerated, with Commission approval), and will provide Delta employees the most state of the art tools to improve safety and the providing of services to current and future Delta customers.⁵⁸ PNG will also look to expand Delta's customer base, engage with underserved communities, and expand Delta's partnerships and working relationships with economic development leaders within communities and government in order to help drive and support further success and growth within the communities in Delta's footprint.⁵⁹ Delta's increased access to capital through the Proposed Transaction will allow Delta the potential to expand its footprint, as the Peoples Utilities have successfully done in underserved communities in Pennsylvania.⁶⁰

Finally, the Proposed Transaction will not adversely affect Delta's customers in Kentucky or the public, nor will it adversely affect any other Kentucky utility.⁶¹ PNG has committed that it will not seek to recover in rates, directly or indirectly, any transaction or transition costs.⁶² PNG has also committed that Delta will continue to use its current tariff and it is not seeking to increase rates as a part of the Proposed Transaction.⁶³

The Acquiring Applicants respectfully submit that the Proposed Transaction is in the public interest and should be approved.

⁵⁸ Poljak Direct, p. 8; O'Brien Direct, pp. 11-13.

⁵⁹ O'Brien Direct, p. 12.

⁶⁰ VR, 06/08/17, O'Brien Cross, 10:35:44 – 10:38:07 and 11:11:22 – 11:14:45.

⁶¹ Poljak Direct, p. 8.

⁶² Poljak Direct, p. 9; O'Brien Direct, p. 8.

⁶³ O'Brien Direct, p. 8.

IV. Conclusion.

For the reasons stated herein, as well as the additional basis as set forth in the Joint Application, Amended Joint Application, and the testimony of Mr. O'Brien, Mr. Poljak, and Mr. McGuire, the Acquiring Applicants respectfully submit that they have satisfied the requirements of KRS 278.020(6) and (7) and that the Commission should approve the Proposed Transaction.

Dated: June 21, 2017

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned counsel for PNG Companies LLC and Drake Merger Sub Inc. hereby certifies that this electronic filing of Joint Applicants' Motion for Leave to File Amended Joint Application is a true and accurate copy of the same materials being filed in paper medium; that this electronic filing has been transmitted to the Commission electronically on June 21, 2017; that an original and six paper copies in paper medium will be delivered to the Commission within two business days after this date.

/s/ Francis J. Mellen, Jr.

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