

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

THE 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 )

CASE NO.  
2007-00494

**RESPONSE TO ATTORNEY GENERAL'S INITIAL  
REQUEST FOR INFORMATION TO THE JOINT APPLICANTS**

Joint Applicants Heritage Operating L.P. ("Heritage") and Bright's Propane Service, Inc. ("Bright's"), for their Response to the Attorney General's Initial Request for Information, state as follows:

**INTRODUCTION TO RESPONSES**

Pursuant to Joint Applicants' understanding via teleconference with the Attorney General's Office, the answers provided address the status of the utility assets after the contemplated transaction. Also pursuant to understanding with the Attorney General's Office, and in order to avoid unreasonably escalated transaction costs that would be generated by multiple discovery disputes, the parties have agreed that the questions presented by the Attorney General may be answered in the appropriate context, i.e., the transfer of a small operating utility's assets. The parties recognize and agree that the proposed transfer does not give rise to the scope of issues that arise in a case involving the acquisition and/or merger of very large utilities in which complex accounting, taxation, allocation, and rate issues inevitably arise. In order to address the Attorney General's stated concerns with regard to maintenance of safe, reasonably priced, and efficient customer service for Bright's customers, Joint Applicants affirmatively state as follows:

- That the transaction is a transfer of the assets which will result in maintaining the existing employees, the existing level of service, and the existing level of customer relationships;
- That no financing is required and that Heritage is financially able to manage Bright's;
- That Heritage is already in business in Kentucky, albeit unregulated, and is in good standing, *See* Joint Application paragraph 1, 2 ; Exhibit 4;
- That the transactional costs of Bright's, which consist of attorneys' fees and accounting costs, will be absorbed, respectively by the Buyer and Seller and will not be passed on to Bright's customers;
- That it is the intent of Heritage Operating LP to comply with applicable statutes and regulations and work in good faith with the responsible agencies;
- That Heritage agrees to a one year freeze for base rates for the customers served by the utility assets being transferred, with the understanding that such freeze does not affect the purchased gas adjustment procedure to which it is entitled;
- That Tommy Manion, the executive responsible for Bright's, has the technical and managerial experience to oversee the operation of the subject utility assets, and also commits to continuing education in pipeline safety. Heritage has a pipeline safety division that will be a resource to Bright's. *See* Joint Application paragraph 12; Exhibit 6;
- That Tommy Manion and John Bright will be available to respond to questions with regard to the answers provided herein.

## **RESPONSES**

1. Please provide the names of the personnel who will comprise the executive management of the Bright's Propane Service, Inc. ("Bright's"), following any transfer of control allowed by the Commission, and describe in detail the financial, technical and managerial abilities they possess enabling them to engage in the propane industry.

**RESPONSE:** Following the transfer of control, the executive responsible for the operation of the utility asserts will be Tommy Manion of Heritage. Mr. Manion is regional director of Heritage. His education and experience is set forth in the Joint Application at ¶ 8. Mr. Manion possesses civil engineering degrees and CETP certification as well as extensive experience in bottled propane industry beginning in 1991 working for Foster's Propane, his family's bottled

gas company which was purchased by Heritage and remains in operation. John Bright will be available as a consultant to insure a seamless transition. Joint Application, ¶ 9. Customer service will remain as it is. See Joint Application, ¶ 11.

- a. Please provide the total employee count of Bright's immediately prior to the contemplated transaction, and provide an estimated employee count following the transaction, extending to 12 months following the date of the contemplated transaction.

**RESPONSE:** As stated in the Joint Application, all five of Bright's employees will remain with their responsibilities intact.

- b. Please state whether the financial, technical or managerial functions or duties of any current Bright's employee will be outsourced, and if "yes", specifically identify the nature of the job responsibilities to be outsourced and the name of the person or entity who/which will assume the responsibilities.

**RESPONSE:** No.

- c. State whether any Bright's employees residing in Kentucky will be laid off or otherwise terminated as a result of the contemplated transaction, and if so, provide, with as much accuracy as possible, the number, and names, of any employees so affected.

**RESPONSE:** No.

- d. Please provide the total number of employees dedicated to working on customer service issues. Please provide the total number and identities of such employees both as of the date of your response to this request, and those projected after the contemplated transaction.

**RESPONSE:** John Bright has customer service responsibility. Tommy Manion will assume this responsibility.

2. Please identify all of the Joint Applicants' subsidiaries and affiliates that will exist following the contemplated transaction, and state with specificity whether each one will be subject to regulation by:
  - b. the Kentucky Public Service Commission;
  - c. any other state utility Commission, and if so, the name of the Commission(s); and
  - d. any other state, federal or other agency.

**RESPONSE:** Heritage Operating, L.P.'s corporate affiliates are identified on Exhibit 5. There will be no change to the corporate structure as a result of the transfer of the utility assets, and those assets will be acquired and held by Heritage Operating, L.P.

Heritage Operating, L.P. is an operating subsidiary partnership of Energy Transfer Partners, LP, a publicly-traded Master Limited Partnership which engages in natural gas storage and transmission in Louisiana, Texas, Colorado, New Mexico and Arizona through a number of operating subsidiary partnerships ("the midstream operations," collectively). Heritage Operating, L.P.'s operations and business activities share no common operations or business activities with any of the midstream operations. As such, none of the various entities involved in the midstream operations have been, or will be, subject to regulation by the Kentucky Public Service Commission by virtue of the completed acquisition by Heritage Operating, L.P.

Heritage Operating, L.P.'s activities with respect to multi-user metered gas delivery systems ("jurisdictional systems")<sup>1</sup> operate under the U.S. DOT Office of Pipeline Safety. For safety purposes, Heritage's operations are subject to a number of state and federal agencies including not only U.S. DOT but also the Office of Homeland Security and various state agencies certified by OPS. See response #4 to the Commission's request and accompanying Exhibit.

3. Please state what benefits the Joint Applicants hope to reach as a result of the contemplated transaction.

**RESPONSE:** The benefit will be the seamless transfer of assets. Heritage will keep all employees and assume all contracts. See Joint Application, ¶¶ 8,9,11.

4. Did, or will, the Joint Applicants have to seek approval for the contemplated transaction (including the Kentucky State Fire Marshal) for the contemplated transaction? If so, please submit copies of any and all filings and responses from any such agency in this regard.

**RESPONSE:** Joint Applicants are not required to seek approval for the transfer of the utility assets from any other agency except the Kentucky Public Service Commission. Upon receipt of this request, Attorney for the Joint Applicants Helen Helton made inquiry of both the Attorney General's office and the State Fire Marshall's office, and neither office indicated that there is any requirement to obtain Fire Marshall approval of which they are aware. Joint Applicants state that, should such a requirement be identified, they will comply.

a. If so, has or will any such agency seek any conditions to the transaction?

**RESPONSE:** Not applicable.

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<sup>1</sup> Jurisdictional systems are those subject to U.S. DOT Office of Pipeline Safety 1. More than one customer from a single source in a public place (public place such as commercial buildings, churches, schools) 2. Ten or more customers from a single source. 3. A single customer whose line from a tank crosses a highway.

- b. Do the Joint Applicants anticipate any changes in any contracts as a result of the contemplated transaction (e.g., engineering, information technology, maintenance, etc.)?

**RESPONSE:** Joint Applicants anticipate no such changes at this time.

- c. Do the Joint Applicants anticipate any changes in customer charges or any and all other fees charged for services as a result of the contemplated transaction?

**RESPONSE:** Joint Applicants anticipate no changes at this time in customer charges or fees as a result of the transaction. However, subsequent to a one-year rate freeze, Heritage reserves the right to which it is entitled by Kentucky law to seek reasonable rates pursuant to Commission procedures. The Attorney General is entitled by law to intervene in such proceeding and to assert, at that time, that any rate sought is not just and reasonable pursuant to statute.

- d. If the answer to the previous question is yes, please describe the changes in specific detail.

**RESPONSE:** Not applicable.

5. Please state whether the Joint Applicants intend to change members of Bright's board of directors following the transfer of control, if approved by the Commission. If so, identify the changes with particularity, identifying each member by name and address.

- e. Provide biographical information of each member of Bright's board of directors, regardless of whether they are an existing member or are anticipated as being a new member, including a statement of their qualifications to serve as a board member in a propane company.

**RESPONSE:** Management responsibilities after the transfer of assets will be lodged with Tommy Manion. Issues with regard to Bright's "board of directors" are not relevant, as this case concerns the transfer not of a company but of its assets. Tommy Manion's biographical information is found in the Joint Application, ¶ 8.

6. State whether any of Bright's executive management, and members of its proposed board of directors are members, officers, partners, directors of, or have a controlling interest in, any business entity engaged in the distribution or transportation of gas (whether propane or natural gas), and if so, identify them by name and by type of interest.

**RESPONSE:** Heritage Operating LP is the 3<sup>rd</sup> largest propane gas retailer in the United States. For a detailed description of Heritage's operations, please see Joint Application, ¶ 1.

7. Please state whether Bright's, either currently or as a result of the contemplated transaction, will engage in non-regulated activities in any location. If so, please provide:

- a. the nature of the activity;
- b. the location of the activity;
- c. a breakdown by percentage of the amount of non-regulated activity and regulated activities in which Bright's will engage; and
- d. the amount of revenue derived from non-regulated activities.

**RESPONSE:** The regulated system will be a part of Heritage Operating L.P., which sells propane. Heritage's non-regulated revenues for its last fiscal year end were [REDACTED] (it had no regulated revenues). Bright's revenues from regulated activities were \$50,868.00 and represents [REDACTED] ratio of regulated to non-regulated.

8. As a result of the contemplated transaction, will Bright's be incurring any additional debt? If so, provide full details.

**RESPONSE:** See response to Question 22.

9. Please identify, in detail, any and all tax savings that Bright's and Heritage expect to result from the contemplated transaction, and provide any relevant quantifications.

**RESPONSE:** None have been identified.

10. Please state whether Bright's currently has any deferred tax accounts on its balance sheets. If "yes," please identify the account(s), the amount carried therein, and provide a summary of the nature of the balance.

- a. For each deferred tax balance identified above, please state what impact the contemplated transaction will have on the account (e.g., will the contemplated transaction result in a loss of any deferred tax credits?).

**RESPONSE:** No.

11. Please state whether any of the Joint Applicants' employees, officers, directors, consultants, or contractors will receive, directly or indirectly, any bonus, stock option, and/or any other remuneration of any type or sort resulting from the contemplated transaction. If so, please identify the person, the method of remuneration, whether directly or indirectly, whether it is deferred, and the amount or dollar value thereof.

**RESPONSE:** No.

12. Do the Joint Applicants agree that there are two categories of costs for the proposed transaction, namely: (1) costs-to-achieve the transaction (e.g., due diligence reports, legal counsel, etc.); and (2) costs-to-achieve cost savings in the post-transaction structure (e.g., systems integration, etc.)? If no, please identify the categories and provide a definition.

Regardless of the answer, please provide the following:

- a. For the costs-to-achieve the transaction, explain how the Joint Applicants determine the costs that are allocated to or the responsibility of their shareholders, and those costs that are allocated to or the responsibility of their ratepayers. Include any allocation methodologies.
- b. For the costs-to-achieve cost savings, explain how the Joint Applicants determine the costs that are allocated to or the responsibility of their shareholders, and those



costs that are allocated to or the responsibility of their ratepayers. Include any allocation methodologies.

- c. For the costs-to-achieve the transaction, explain how the Joint Applicants determine the costs that are allocated to or the responsibility of their non-regulated operations. Include any allocation methodologies.
- d. For the costs-to-achieve cost savings, explain how the Joint Applicants determine the costs that are allocated to or the responsibility of their regulated operations. Include any allocation methodologies.
- e. Do the Joint Applicants agree that there are certain costs associated with the contemplated transaction that are attributable solely to the process of obtaining the approval of the transaction (e.g. legal counsel for the regulatory proceedings)?
- f. Do the Joint Applicants consider the reduction of a company's or unit's operating loss a cost savings?
- g. Please supply an itemized schedule that shows the cost-to-achieve the transaction by year for as many years as your projections provide. (This is a request for a schedule that shows the estimated costs by year.)
- h. For the schedule requested under sub-part g (the prior question), please identify by year for as many years as your projections provide the following:
  - (1) the assignment of costs to each of the Joint Applicants' shareholders;
  - (2) the assignment of costs to each of the Joint Applicants' ratepayers; and
  - (3) the breakdown of the assignment of costs between regulated and non-regulated operations of each of the Joint Applicants.

- i. Please supply an itemized schedule that shows the costs-to-achieve the costs savings post-transaction by year for as many years as your projections provide. (This is a request for a schedule that shows the estimated costs by year.)
- j. For the schedule requested under sub-part i (the prior question), please identify by year for as many years as your projections provide the following:
  - (1) the assignment of costs to each of the Joint Applicants' shareholders;
  - (2) the assignment of costs to each of the Joint Applicants' ratepayers; and
  - (3) the breakdown of the assignment of costs between regulated and non-regulated operations.
- k. Please supply an itemized schedule that shows the cost savings associated with this acquisition for as many years as your projections provide. (This is a request for a schedule that shows the estimated cost savings by year.)
- l. For the schedule requested under sub-part k. (the prior question), please identify by year for as many years as your projections provide the following:
  - (1) the assignment of costs to each of the Joint Applicants' shareholders;
  - (2) the assignment of costs to each of the Joint Applicants' ratepayers; and
  - (3) the breakdown of the assignment of costs between regulated and non-regulated operations.

**RESPONSE:** The Joint Applicants state that there is only one category of costs for the contemplated transaction: the expense necessary to achieve it, which includes attorneys' fees and accounting fees. No ratepayers will be impacted by these costs. The subparts of this question are not applicable.

13. For each category of cost savings, identify the allocation process, including the factors, for allocating costs between regulated and non-regulated operations.

**RESPONSE:** There are no cost savings. The expense of operating the assets will not change.

14. For each category of cost savings, identify the corresponding amount of cost savings allocated to non-regulated operations for that category.

**RESPONSE:** There are no cost savings. The expense of operating the assets will not change.

15. Please provide a copy of any and all due diligence report(s) conducted.

**RESPONSE:** No “due diligence” reports were created specifically for the purpose of addressing the transfer of the utility assets at issue.

16. In the course of conducting their due diligence reviews, did the Joint Applicants identify any facts or circumstances that would have a material adverse effect on Bright’s customers?

**RESPONSE:** Joint Applicants are unaware of any facts or circumstances that would adversely affect Bright’s customers in any way.

17. Please provide all minutes of any meetings held between the shareholders (or owners in general) and the board of directors (or supervisory management) of either of the Joint Applicants pertaining to the contemplated transaction.

**RESPONSE:** No meetings were convened for the purpose of specifically discussing the transfer of the utility assets at issue in this case.

18. Will the contemplated transaction result in any changes in Bright’s accounting principles? If yes, please summarize the change(s).

**RESPONSE:** No.

19. Do the Joint Applicants anticipate entering any new contracts as a consequence of the contemplated transaction? If so, will any of the entities with whom the Joint Applicants will enter said contract(s) be affiliated in any way with the Joint Applicants, or any of their employees, stockholders, officers, contractors, consultants, or directors?

**RESPONSE:** Joint Applicants do not anticipate entering any new contracts as a consequence of the acquisition of the utility assets.

20. Please provide a copy of any and all materials, including but not limited to transcripts of presentations, recordings or notes of presentations, or other information, regarding any and all financial analyses concerning the transaction.

**RESPONSE:** Joint Applicants state that no financing is required for the contemplated transaction and refer the reader to the explanation of the purchase price stated in Joint Application, ¶ 5.

21. Please state whether as a result of the contemplated transaction, Bright's will be required to guarantee any debts of Heritage, its affiliates, subsidiaries, or any partnerships in any manner associated therewith. If so, provide full details.

**RESPONSE:** See response to Question 22.

22. Please state whether as a result of the contemplated transaction, Bright's will be required to grant liens in favor of any lenders of Heritage, its affiliates, subsidiaries, or any partnerships in any manner associated therewith. If so, provide full details.

**RESPONSE:** No new liens will be granted. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

23. In the event Heritage, its affiliates, subsidiaries, or any partnerships in any manner associated therewith default on any debts owed to any lender, will Bright's in any manner become financially liable for any such debt(s)? If so, explain in detail.

**RESPONSE:** The assets acquired will be owned by Heritage Operating LP. There is no separate entity to hold the assets. Heritage is financially liable for the indebtedness on its balance sheet. See Application.

24. Please state whether the contemplated transaction, if approved, will or could have an adverse impact of any type or sort on the ability of the Joint Applicants to borrow money? If so, explain in complete detail.

**RESPONSE:** No.

25. Will the contemplated transaction have any ramifications upon the jurisdiction or authority of the Kentucky Public Service Commission over Bright's?

**RESPONSE:** No.

26. Will Bright's provide clear and conspicuous notice to its customers regarding any change in service(s) resulting from the proposed transaction?

**RESPONSE:** Not applicable. There will be no change in service resulting from the proposed transaction.

27. Describe, in detail, any and all inducements that Heritage offered (other than the consideration stated in the application), or that Bright's demanded or requested during the course of negotiations leading to the proposed purchase that is the subject of the instant filing.

**RESPONSE:** No inducements, offers, or demands are operative other than those specified as consideration in the Joint Application, and no inducements, offers, or demands exist that will have any effect on Bright's customers.

28. Has any regulatory body accused Heritage, or any entity which owns Heritage, its affiliates, subsidiaries, partnerships associated therewith, or any other entity within Heritage's corporate family, of inappropriate conduct such as that set forth in Case No. 8-07 CV1301-K (U.S. Commodity Futures Trading Commission v. Energy Transfer Partners, L.P.; U.S. District Court for the Northern Division of Texas, Dallas Division)? Please provide complete details.

**RESPONSE:** Pursuant to legal advice, Heritage Operating L.P. does not comment on pending litigation.

29. In the event the Kentucky Public Service Commission approves the Joint Applicants' application, would the Joint Applicants agree and adhere to the following commitments (note: this question should not necessarily be construed as the Attorney General's acquiescence to the contemplated transaction):

- a. Upon the completion of the proposed transaction, Bright's shall provide specific company contacts and work with the Attorney General's Office, Commonwealth of Kentucky, on any and all complaints which the Attorney General may receive. Furthermore, specific protocol and timeframes shall be established by both parties to resolve complaints or disputes in an expeditious manner.
- b. The Joint Applicants will provide copies of all applications, notices, final approval orders, or other regulatory notifications received from any and all other regulatory bodies.
- c. The contemplated transaction will not impair, impede, nor prohibit the ability and capabilities of Bright's in meeting its obligations to provide adequate, efficient and reasonable service to its Kentucky customers.
- d. The contemplated transaction will not detract from the benefits that Bright's customers currently receive.
- e. The contemplated transaction will not result in increased rates or increased charges of any type or sort, except those directly related to the purchase and transmission / piping of propane, for Bright's Kentucky customers.
- f. Costs for the contemplated transaction shall not be pushed down to Bright's ratepayers.
- g. No change in control payments will be allocated to the Joint Applicants' customers.

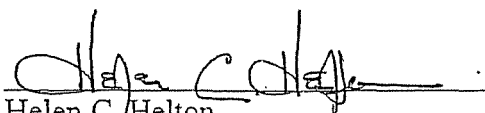
- h. Any costs associated with early termination of any of Joint Applicants' Kentucky-based staff will not be levied against Joint Applicants' customers.
- i. Any additional administrative costs incurred in order to comply with the financial and accounting standards of any other regulatory body, whether federal or state, will not be borne by Joint Applicants' customers.
- j. The Joint Applicants agree to filing with the Commission and the Attorney General copies of their annual reports to their respective shareholders (or owners in general).
- k. Before implementing any management practice, the Joint Applicants commit to taking into full consideration the related impacts on levels of customer service and customer satisfaction, including any negative impacts resulting from any workforce reductions.

**RESPONSE:** As stated in the Joint Application, the proposed transaction is a seamless transfer of assets that will not adversely affect Bright's customers in any way. Bright's tariff will be adopted. Bright's contracts will be assumed. Even the utility contact information will remain the same with the exception that Tommy Manion will replace John Bright in management duties. Mr. Manion will continue to be responsive to any complaints. The contemplated transaction will neither impair nor impede Bright's ability to meet its obligations to provide adequate, efficient and reasonable service to its customers.

Many commitments requested by the Attorney General's Office in this data request exceed statutory requirements, exceed obligations imposed upon other comparable utilities by applicable law, and are not based on any failure or transgression by the Joint Applicants. Nevertheless, without waiving their rights under applicable law, Joint Applicants state that they will continue to act in good faith to comply with applicable statutes and regulations and to work in good faith with the relevant agency or agencies to rectify problems, should they arise. Joint

Applicants also reiterate that the contemplated transaction will not detract from the current benefits that Bright's customers receive; that a rate freeze (other than rates related to commodity costs) for one year will be implemented; that transaction costs discussed in response to Question 12 will be absorbed rather than passed to Bright's utility customers; that all employees will be retained; and that there will be no reduction of workforce or adverse impact on utility customers.

Respectfully submitted,



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Counsel for Heritage Operating L.P.



**CERTIFICATION**

The undersigned, JOHN W. BRIGHT being first duly sworn, states that he is VICE PRESIDENT of Bright's Propane Service, Inc., and certifies that he supervised the preparation of the foregoing responses and that the responses are true and accurate to the best of his knowledge, information and belief formed after a reasonable inquiry.

John W. Bright

Subscribed and sworn to before me, this 19<sup>th</sup> day of December, 2007.

Connie F. Lewis  
Notary Public

My Commission expires 1-03-09.

**CERTIFICATION**

The undersigned, Steven T. Manian, being first duly sworn, states that he is Vice President/Regional Mgr. of Heritage Operating, L.P., and certifies that he supervised the preparation of the foregoing responses and that the responses are true and accurate to the best of his knowledge, information and belief formed after a reasonable inquiry.

Steven T. Manian

Subscribed and sworn to before me, this 19<sup>th</sup> day of December, 2007.

[Signature]  
Notary Public

My Commission expires 12/10/09.

**CERTIFICATE OF SERVICE**

It is hereby certified that this 21<sup>st</sup> day of December, 2007, I have served the foregoing by

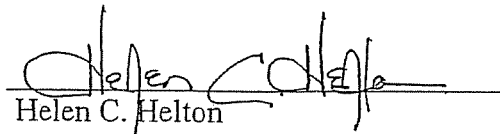
U.S. Mail, postage prepaid, upon the following:

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