

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF AMERIGAS PARTNERS, L.P.	)	
AND COMMERCIAL PROPANE SERVICE LLC FOR	)	
APPROVAL OF COMMERCIAL PROPANE SERVICE	)	CASE NO.
LLC'S ACQUISITION OF AMERIGAS PARTNERS, L.P.'S	)	2014-00250
UTILITY ASSETS IN OLD BRIDGE SUBDIVISION,	)	
DANVILLE, KENTUCKY	)	

ORDER

On July 30, 2014,<sup>1</sup> AmeriGas Partners, L.P. ("AmeriGas") and Commercial Propane Service LLC ("CPS") (collectively, "Applicants") filed a Joint Application for approval pursuant to KRS 278.020(5) and (6) and 807 KAR 5:001, and all other applicable statutes and regulations, for CPS's acquisition of Heritage Operating, LP d/b/a Bright's Propane Service, Inc. ("Bright's Propane"), constituting AmeriGas's utility assets in the Old Bridge Subdivision in Boyle County, Kentucky. Although these assets are referred to in the Application as the "Old Bridge System," they will be referred to herein as Bright's Propane.<sup>2</sup> There were no intervenors in this case.<sup>3</sup>

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<sup>1</sup> The Application was received July 21, 2014, but contained filing deficiencies. The deficiencies were cured on July 30, 2014, and the Application was accepted for filing as of that date.

<sup>2</sup> In the Purchase and Sale Agreement attached as Exhibit 3 to the Application, these assets are referred to as the "assets of Seller, all of which are owned and used in connection with the propane gas distribution utility system owned and operated by Seller in Old Bridge Subdivision in Boyle County, Kentucky (the "System")."

<sup>3</sup> Although there were no intervenors in this matter, letters were received from several current customers of the utility in support of the transfer request.

In response to Applicants' motion, an informal conference attended by Applicants and Commission Staff for the purpose of discussing issues related to the Application was held on August 15, 2014. On September 24, 2014, the Commission issued an Order which extended its review of this matter for an additional 60 days.<sup>4</sup> The Applicants responded to Commission Staff's October 23, 2014 First Request for Information on November 5, 2014.<sup>5</sup>

### BACKGROUND

On October 11, 2013, the Commission approved AmeriGas's acquisition of Bright's Propane's assets, which are used to provide propane gas to the residents of the Old Bridge Subdivision via an underground piped distribution system. The assets consist of in-ground mains, supply tanks, service lines, and meters serving 52 customers.<sup>6</sup> AmeriGas is a publicly traded Delaware master limited partnership that operates the nation's largest retail propane distribution business.<sup>7</sup>

CPS is a locally owned, Kentucky limited liability company that has operated for 15 years throughout the Southeastern and Eastern United States, providing bottled-gas

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<sup>4</sup> Pursuant to KRS 278.020(6), the Commission is required to rule on applications for acquisition or transfer of ownership within 60 days after such applications are filed. However, for good cause, the Commission may extend this period for an additional 60 days.

<sup>5</sup> The processing of this case was delayed because Amerigas's 2013 Annual Report was not filed with the Commission until October 15, 2014.

<sup>6</sup> Case No. 2013-00241, *Application of AmeriGas Partners, L.P. and AmeriGas Propane, L.P. for Approval of the Acquisition of the Utility Assets of Heritage Operating, L.P. D/B/A Bright's Propane Service, Inc. and for Authority to Abandon the Pipeline System and Serve Customers by Other Means* (Ky. PSC Oct. 11, 2013). On October 15, 2011, AmeriGas entered into a Contribution and Redemption Agreement ("Purchase Agreement") to acquire the propane operations of Energy Transfer Partners, L.P., including its subsidiaries that operated Bright's Propane. The Purchase Agreement closed on January 12, 2012, and AmeriGas became the owner of Bright's Propane. See Case No. 2013-00337, *AmeriGas Partners, L.P., AmeriGas Propane, L.P., and Energy Transfer Partners, L.P. Alleged Failure to Comply with KRS 278.020* (Ky. PSC Nov. 15, 2013), in which AmeriGas and Energy Transfer agreed to be collectively assessed a civil penalty of \$7,500.00 for failure to obtain Commission approval prior to the transfer of Bright's Propane.

<sup>7</sup> Application at 1.

service and propane-system installations, inspections, and repairs, including storage tank installations for AmeriGas and bottled-gas service to customers located between Lebanon and New Haven, Kentucky.<sup>8</sup>

### OVERVIEW OF THE TRANSACTION

CPS proposes to acquire Bright's Propane's utility assets from AmeriGas. This acquisition will occur, subject to the approval of the Commission, under the terms of a Purchase and Sale Agreement ("Agreement") dated July 17, 2014, by and between AmeriGas and CPS.<sup>9</sup> Pursuant to this Agreement, for a total consideration of \$5,000 plus the wholesale cost of gas in the utility's supply tanks,<sup>10</sup> CPS will acquire the utility operations of AmeriGas on the effective date of the transfer. Assets to be acquired by CPS include one 18,000-gallon above-ground supply tank, which is the main supply tank for the subdivision, and three 1,000-gallon underground supply tanks, which are also used to serve customers in the subdivision.<sup>11</sup>

### STATUTORY STANDARDS

Pursuant to KRS 278.040(2), the 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. The Applicants have requested Commission approval of CPS's acquisition of ownership and control of Bright's Propane pursuant to KRS 278.020(5) and (6) and 807 KAR 5:001.

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<sup>8</sup> *Id.* at 1-3.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> *Id.* at Exhibit 3, p. 2.

<sup>11</sup> *Id.* at Exhibit 3, p. 27. *See also* Response to Commission Staff's First Request for Information, Item 1. Supply tanks with a total capacity of 21,000 gallons are used to serve the utility customers of Bright's Propane.

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 “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 . . . .”

#### DISCUSSION

As a utility defined under KRS 278.010(3), CPS’s acquisition of Bright’s Propane is subject to the provisions set forth in KRS 278.020(5) and (6) for acquiring a

jurisdictional utility. The Applicants assert that after the proposed acquisition, CPS will have the financial, managerial, and technical ability to enable it to continue to provide reasonable service to its customers, as required by KRS 278.020(5).

Prior to executing the Agreement, AmeriGas performed a system inspection, including leak tests, to assure CPS that the utility assets in the Old Bridge Subdivision are in safe and operable condition.<sup>12</sup> CPS avers that it has the capability to continue the viability of the system following its acquisition. Michael W. Roberts, CPS's Owner and President, has 35 years of experience in the propane business, is licensed in Kentucky as the owner of a liquefied petroleum business, and has attended and passed the National Propane Gas Association's Certified Employee Training Program.<sup>13</sup> Mr. Roberts began his career in 1979 as a propane-equipment salesman and, in 1993, formed Bluegrass Meter, which rebuilt propane meters, compressors, and pumps.<sup>14</sup> Approximately 15 years ago, Bluegrass Meter became CPS and expanded its services to include bulk-plant installations and underground piping for commercial-scale tanks.<sup>15</sup>

In addition to Mr. Roberts, CPS's other employees will be responsible for the direction and day-to-day operations of the Bright's Propane system. Ronald Humphrey has been with CPS for nearly four years and is experienced in piping large commercial tanks, proving meters, removing plants, setting residential tanks, and hydro-testing and inspecting propane trucks.<sup>16</sup> Chuck Howell has been with CPS for five months, is a

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<sup>12</sup> *Id.* at 2.

<sup>13</sup> *Id.* at 3.

<sup>14</sup> *Id.* at 2.

<sup>15</sup> *Id.* at 3.

<sup>16</sup> *Id.* See also Response to Commission Staff's First Request for Information, Item 2.a.

bobtail driver who has a commercial driver's license, and is hazardous material certified.<sup>17</sup> Adrian Roberts, who has a bachelor's degree in business management, is the office manager for CPS and is responsible for accounts receivable, accounts payable, customer service, and employee management.<sup>18</sup> Ms. Roberts has been with CPS for five years.<sup>19</sup>

CPS maintains that it is currently a debt-free business and will remain so upon its acquisition of Bright's Propane.<sup>20</sup> CPS had net profits of \$51,909 in 2011, \$52,897 in 2012, and \$86,682 in 2013,<sup>21</sup> and as of July 1, 2014, it had approximately \$594,700 in assets, including current assets of \$227,700 and fixed assets of \$367,000.<sup>22</sup> Although the application lists \$500,000 in "Owner Loans,"<sup>23</sup> CPS clarified that this amount should be labeled as "Owner's Equity," rather than as "Owner's Loans," because it represents Mr. Roberts' initial capital investment in CPS and that there are no promissory notes or other evidence of indebtedness relating to his capital contribution.<sup>24</sup>

Based on the above, CPS has shown that it possesses the "financial, technical, and managerial abilities to provide reasonable service," as required by KRS 278.020(5).

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<sup>17</sup> *Id.* at 3. *See also* Response to Commission Staff's First Request for Information, Item 2.b. Chuck Howell worked as a dump truck and garbage truck driver for the Marion County Road Department from 2010 to 2014 prior to joining CPS.

<sup>18</sup> *Id.* at 3. *See also* Response to Commission Staff's First Request for Information, Item 2.c.

<sup>19</sup> *Id.* at 3.

<sup>20</sup> *Id.* at 4.

<sup>21</sup> *Id.* at 4.

<sup>22</sup> *Id.* at Exhibit 7, p. 1.

<sup>23</sup> *Id.* at Exhibit 7, p. 2.

<sup>24</sup> Response to Commission Staff's First Request for Information, Item 3.

The Applicants further assert that the proposed acquisition of utility assets will be made in accordance with law, will be for a proper purpose, and will be consistent with the public interest, as required by KRS 278.020(6). CPS intends to own and operate Bright's Propane indefinitely, providing the same safe and reliable service to which Bright's Propane's customers are accustomed. CPS contends that maintaining Bright's Propane as a functioning utility is a proper purpose.<sup>25</sup>

The Applicants assert that the transfer of Bright's Propane will not adversely affect the customers. CPS states that following the Commission's approval of the Joint Application it will adopt the existing Bright's Propane tariff and does not foresee a need to alter the existing rate structure, and customers will continue to receive service pursuant to the terms and conditions under which their service is currently provided.<sup>26</sup> In addition, Applicants point out that CPS has the customer-service infrastructure necessary to support Bright's Propane and has had an A+ rating with the Better Business Bureau for the last three years.<sup>27</sup> The Commission has held that the public interest standard of KRS 278.020(6) requires that either the transfer will not adversely affect the existing level of utility service or rates or that any potentially adverse effects can be avoided through the Commission's imposition of reasonable conditions on the acquiring party.<sup>28</sup> The acquiring party should also demonstrate that the proposed transfer is likely to benefit the public through improved service quality, enhanced service

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<sup>25</sup> Application at 5.

<sup>26</sup> *Id.* See also Testimony of Michael W. Roberts, p. 5.

<sup>27</sup> *Id.* at Exhibit 9.

<sup>28</sup> Case No. 2002-00018, *Application for Approval of the Transfer of Control of Kentucky-American Water Company to RWE Aktiengesellschaft and Thames Water Aqua Holdings GmbH* (Ky. PSC May 30, 2002), Order at 7.



reliability, the availability of additional services, lower rates, or a reduction in utility expenses to provide present services.<sup>29</sup> Such benefits, however, need not be immediate or readily quantifiable.<sup>30</sup>

### ACCOUNTING FOR THE TRANSACTION

CPS is acquiring the utility assets of AmeriGas used to provide service in the Old Bridge Subdivision for the amount of \$5,000. It is also acquiring the propane gas in the system's supply tanks at the wholesale cost of the gas as of the effective date of the transfer.<sup>31</sup>

#### Utility Assets

AmeriGas recorded the utility assets on its books at amounts established by Heritage Operating L.P. ("Heritage") from whom AmeriGas acquired the assets in 2012.<sup>32</sup> In addition to the land, mains, and meters, Heritage had recorded intangible plant to reflect the difference between the purchase price at which it acquired the assets and the net book value of those assets at the time of its acquisition. With a \$186,076 balance for intangible plant, first Heritage and then AmeriGas carried a total utility plant balance of \$242,092 on their books of account.

The Uniform System of Accounts ("USoA") adopted by the Commission for small gas distribution utilities requires that utility plant assets be recorded on the books of anyone who acquires those assets at the cost of the assets to the person who initially

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> The wholesale cost of the propane in storage as of September 30, 2014, was \$14,860.

<sup>32</sup> Case No. 2013-00241 (Ky. PSC Oct. 11, 2013), Order at 3. *Also see* footnote 6 of this Order.



devoted the assets to utility service.<sup>33</sup> That is why Heritage carried the land, mains, and meters that make up the utility system on its books at \$23,440, \$29,201, and \$3,375, respectively, with an intangible plant balance of \$186,076, rather than record them at “market” value based on the amount it paid when it acquired the utility system.<sup>34</sup>

Under the terms of the instant transfer, it is neither required nor appropriate for CPS to recognize the intangible plant balance of \$186,076 reflected on AmeriGas’s books when it records its acquisition of the utility assets. It should record the assets at their original costs as stated above. The total utility plant being acquired by CPS will be reported in the amount of \$55,916.<sup>35</sup>

#### Accumulated Depreciation

When it sold the utility assets to Heritage, Bright’s Propane’s books included an accumulated depreciation balance of \$48,798.<sup>36</sup> This balance had been reported on Bright’s Propane’s books since 2005, when its depreciable assets, including intangible plant, were fully depreciated. Had it correctly followed the USoA, Heritage would have carried that balance forward to its books when it acquired the utility assets. However, while it carried Bright’s Propane’s utility plant balances forward on its books, Heritage

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<sup>33</sup> The USoA applicable to small natural gas utilities may be viewed on the Commission’s website under Utility Information/Utility Forms/Uniform System of Accounts/Gas Class C.

<sup>34</sup> These amounts reflect the original costs of the assets at which Bright’s Propane, the original owner of the utility system, had recorded the assets on its books.

<sup>35</sup> The USoA accounting and reporting requirements will apply to CPS’s regulated operations and are solely for regulatory purposes. They do not govern how this transaction and CPS’s subsequent operation of the utility system are to be reported for income tax or other purposes.

<sup>36</sup> This amount is shown as the balance in the 2008 partial year annual report Bright’s Propane filed with the Commission subsequent to the sale to Heritage.

reported an accumulated depreciation balance of zero on its books immediately after its acquisition of the assets.<sup>37</sup>

Based on the intangible plant it recorded to reflect the premium it paid for the assets, Heritage recorded annual depreciation expense of \$6,450 during its tenure as owner of the system.<sup>38</sup> AmeriGas has also recorded this amount as depreciation expense and, on December 31, 2013, the accumulated depreciation balance shown in AmeriGas's 2013 Annual Report was \$37,642. Based on an annual expense of \$6,450, this amount will have increased to \$43,555 by December 1, 2014, the effective date of the instant transfer. Although CPS may have expected to carry this amount forward on its books, the amount CPS will record on its books will be based on the accumulated depreciation balance last reported by Bright's Propane.

Because the intangible plant recorded on AmeriGas's books will not be carried forward by CPS, the related accumulated depreciation will likewise not be carried forward to its books. The utility assets being acquired by CPS were fully depreciated during the period they were owned by Bright's Propane. As the assets are carried forward at their cost when they were first devoted to utility service, the accumulated depreciation balance carried forward should reflect that cost and the depreciation expense that was recorded based on that cost. Based on the accumulated depreciation balance last reported by Bright's Propane, the net book value of the assets CPS is acquiring will be \$7,118.<sup>39</sup>

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<sup>37</sup> Zero was shown as the beginning balance in the 2008 partial year annual report Heritage filed with the Commission.

<sup>38</sup> AmeriGas recorded this same amount of depreciation expense during 2013.

<sup>39</sup> This net book value is the difference between the \$55,916 amount at which CPS will record the utility assets it is acquiring and the accumulated depreciation balance of \$48,798.

## Plant Acquisition Adjustment

When the amount paid by a party acquiring utility assets differs from the assets' net book value, the USoA requires that the difference be recorded as a plant acquisition adjustment.<sup>40</sup> In this instance, based on the \$7,118 net book value and the \$5,000 purchase price, the resulting plant acquisition adjustment is a negative \$2,118. While CPS is required to recognize this negative plant acquisition adjustment when it records its acquisition of the utility assets on its books, it will make an offsetting accounting entry that results in the plant acquisition adjustment's not being carried on its books after it completes its recording of the transaction.

After recording the transfer, including the negative plant acquisition adjustment, the changes to CPS's books will be as follows:<sup>41</sup>

<u>Debit</u>		<u>Credit</u>	
Utility Plant - Acct. 101	\$55,916 <sup>42</sup>	Accumulated Depreciation - Acct. 108	\$48,798
		Cash - Acct. 131	5,000
		Plant Acquisition Adjustment - Acct. 114	2,118

The offsetting entry to remove the plant acquisition adjustment from CPS's books of account will be a debit of \$2,118 to Account 114 and a credit of the same amount to Account 108, Accumulated Depreciation. After this entry, the impact on CPS's books will be:

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<sup>40</sup> Heritage departed from this USoA requirement when it recorded the amount it paid that was in excess of the net book value of the utility assets as intangible plant. Although that action has no direct impact on this transfer, it should be noted.

<sup>41</sup> The changes shown do not include the monetary value of the propane gas in the supply tanks at the time of the transfer because that amount is not known at this time.

<sup>42</sup> In the case of CPS, Account 101 will contain the sum of Account 365.1, Land and Land Rights; Account 376, Mains; and Account 381, Meters.

<u>Debit</u>		<u>Credit</u>			
Utility Plant - Acct. 101	\$55,916	Accumulated Depreciation	- Acct. 108	\$50,916	
		Cash	- Acct. 131	5,000	

### ANNUAL REPORTS

Applicants requested that the effective date of the transfer be the first day of the first calendar month following the issuance of an Order approving the transfer. The Commission's granting of that request means that AmeriGas will own and operate the utility for the first 11 months of 2014, while CPS will own and operate it for the last month of 2014. Such a split of the year 2014 as to ownership of the utility system requires that each party file a report with the Commission covering the portion of the year it was the owner.

The reports to be prepared by AmeriGas and CPS for filing with the Commission are due by March 31, 2015. Due to the aforementioned delay of AmeriGas in filing its 2013 Annual Report, we will use this occasion to emphasize the necessity for reports to be filed on a timely basis.<sup>43</sup> We will further remind both parties that failure to obey an Order of the Commission shall result in the offender being subject to civil penalty of up to \$2,500 or a criminal penalty of up to six months of imprisonment.<sup>44</sup>

Pursuant to 807 KAR 5:006, Section 4(2), reports are to be filed using the Commission's electronic filing system. For further information, the parties may e-mail PSC.Reports@ky.gov.

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<sup>43</sup> Information on annual reports for small natural gas utilities may be viewed on the Commission's website under Utility Information/Utility Forms/Annual Report Forms.

<sup>44</sup> KRS 278.990. The Commission recognizes that the 2013 report filed by AmeriGas was the first annual report for which it was responsible. However, now that it has the experience of preparing and submitting an annual report, the Commission expects that AmeriGas will not again experience the difficulties and delays it encountered in preparing and filing that report.

## FINDINGS

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that there is sufficient evidence to support the position that CPS will have the financial ability to provide reasonable service to Bright's Propane's customers. CPS 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 Bright's Propane'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.

IT IS THEREFORE ORDERED that:

1. The proposed acquisition of Bright's Propane by CPS as described in the Application is approved.
2. Commission authorization of the proposed acquisition of the assets of Bright's Propane is effective for one year from the date of this Order and shall lapse if not completed within this time period.
3. The Applicants shall notify the Commission in writing within seven days of the date that the acquisition has been completed. If it is not completed within the time called for in the Application, the Applicants shall provide a written status report to the Commission.
4. If CPS's acquisition of Bright's Propane occurs on December 1, 2014, as proposed in the Application, then no later than March 31, 2015, AmeriGas shall file an annual report for Bright's Propane for the first 11 months of 2014, and CPS shall file an annual report for Bright's Propane for the month of December 2014.

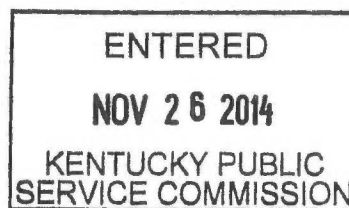
5. Within 20 days of the completion of the approved acquisition, CPS shall file a signed and dated adoption notice in accordance with 807 KAR 5:011, Section 11.

6. Within 10 days of the filing of such adoption notice, CPS shall issue and file with the Commission in its own name the utility's tariff, or such other tariff as it proposes to put into effect in lieu thereof, in the form prescribed in 807 KAR 5:011, Section 11(6).

7. CPS shall operate Bright's Propane according to 807 KAR 5:006, 5:022, 5:023, and 5:027; federal pipeline safety regulations Title 49 Code of Federal Regulations Parts 191, 192, and 199; National Fire Protection Association Code No. 58 and Code No. 59 Standard; and all other applicable laws and regulations.

8. Any documents filed pursuant to ordering paragraph 3 of this Order shall reference the number of this case and shall be retained in the utility's general correspondence file.

By the Commission



ATTEST:

  
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Executive Director

Case No. 2014-00250

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