COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

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AUG 09 2018
PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY FRONTIER GAS, LLC FOR AN ADJUSTMENT OF RATES

CASE NO. 2017-00263

MOTION FOR WAIVER

Kentucky Frontier Gas, LLC, (Frontier) by counsel, moves for a waiver of the requirements of KRS 278.2201 to KRS 278.2213.

KRS 278.2219 states:

> (1) Notwithstanding any provisions in KRS 278.2201 to the contrary, a utility may apply to the commission for a waiver or deviation from any or all provisions of KRS 278.2201 to 278.2213.
>
> (2) The utility's application to the commission shall:
>
> (a) Demonstrate the basis of the utility's need to be granted a waiver or deviation; and
>
> (b) Contain, if appropriate, documentation regarding the costs and benefits of compliance with the provisions of KRS 278.2201 to 278.2213.
>
> (3) The commission shall grant a waiver or deviation if the commission finds that compliance with the provisions of KRS 278.2201 to 278.2213 is impracticable or unreasonable. The findings of the commission shall be a final appealable order.

Frontier is a limited liability company owned and managed by four members, each with one voting share. Frontier owns the stock of Auxier Road Gas Company, which is regulated by the Commission. Steve Shute, Robert Oxford and Larry Rich own DLR Enterprises, Inc., an intrastate pipeline company regulated by the Commission.

Steve Shute individually owns a natural gas utility in Wyoming – Pinedale Natural Gas, which has no ownership or management interest in Frontier. He also owns 100% of a utility consulting business – Pipeline Solutions, Inc. - which has no ownership or management interest in Frontier. Pipeline Solutions, Inc. was incorporated December 12, 1991 in Colorado. Pinedale Natural Gas, Inc. was incorporated September 10, 1993 in Colorado, and Shute was founder and co-owner until his partner died in 2011. Shute now owns 100%. See PSC DR 1-12, exhibit 1. The relationship of Shute's companies to Frontier was explained in response to the AG 1-16 through 1-18.

Robert Oxford has an ownership interest in IGS – a Colorado gas exploration and development company. IGS is a member of Frontier. Frontier has no ownership interest in IGS.

Larry Rich has no other corporate ownership or management interests. Frontier has no ownership interest in or control over Pinedale Natural Gas, Pipeline Solutions, Inc. Similarly, none of the other Shute-related companies individually or collectively own any interest in Frontier or have any control over it. This is confirmed by Mr. Shute in his hearing testimony – Video TR 10:13:58 to 10:14:58 and Response to PSC Sixth DR # 6. Frontier asserts that the evidence presented confirms that there is no affiliated interest among Frontier and the owners' other companies. Only Mr. Shute controls the companies he owns – Mr. Oxford and Mr. Rich have no ownership or management of those companies.

Mr. Oxford is the only Frontier member with an ownership interest in IGS. – Mr. Shute and Mr. Rich have no ownership or management of that company. Mr. Oxford's membership in Frontier and his ownership in IGS, which is also a member of Frontier cannot control Frontier. The voting interests of Mr. Oxford and IGS are separate. The president of IGS (Dennis Horner) votes the interest of IGS, not Mr. Oxford.

Neither of Mr. Shute's other companies own any share of Frontier. It takes three members' votes to control Frontier. Shute has one, Rich has one, Oxford has one and IGS has one. Thus, none of the Frontier members controls Frontier and Frontier cannot control any of the non-Kentucky companies either directly or through any combination of its members.

The issue of the applicability of these statutes to Frontier was raised by the Attorney General based on the bills submitted by Steve Shute to Frontier for preparation of the rate case. Similarly, Mr. Oxford billed Frontier for his individual services related to the rate case. Although those bills were submitted through Mr. Shute's and Mr. Oxford's companies, the services were related to their professional services to Frontier independent of their unrelated companies.

KRS 278.2201 says:

> A utility shall not subsidize a nonregulated activity provided by an affiliate or by the utility itself. The commission shall require all utilities providing nonregulated activities, either directly or through an affiliate, to keep separate accounts and allocate costs in accordance with procedures established by the commission. The commission may promulgate administrative regulations that will assist the commission in enforcing this section.

The payments by Frontier to Shute and Oxford do not subsidize the activities of an affiliate. Frontier does not provide any service to any non-Kentucky company and does not bill any amount for any service to the non-Kentucky companies. Even assuming Mr. Shute's and Mr. Oxford's other companies are affiliates of Frontier, the payments to them for professional services related to the preparation of the rate case and other activities associated with the management of Frontier are not used to fund any activity of those non-Kentucky corporations. There is no sharing of office space, rent, overhead or other expense that would benefit the non-Kentucky companies.

KRS 278.2203 says:

> (1) A utility that engages in a nonregulated activity shall identify all costs of the nonregulated activity and report the costs in accordance with the guidelines in the USoA and the cost allocation methods described in subsection (2) of this section.
>
> (2) In allocating costs between regulated and nonregulated activities, a utility shall utilize one (1) of the following cost allocation methods:
>
> (a) The fully distributed cost method; or
>
> (b) A cost allocation method recognized or mandated by the rules of the SEC promulgated pursuant to 15 U.S.C. sec. 79, et seq., or promulgated by the FERC or by the USDA

To comply with this provision, Frontier must allocate costs it charges to the "affiliates" based on a fully distributed method. Frontier understands charges based on fully distributed cost include:

Labor and non-labor expenses; Payroll taxes, fringe benefits, and incentives associated with labor expenses;
Overhead costs, such as management, administrative, facilities, telecommunications, computers;
Asset costs such as property tax, depreciation, property insurance, and cost of capital.

Because none of these costs are charged to Frontier by the non-Kentucky companies and there is no cost charged by Frontier to the non-Kentucky companies, there is no "distributed cost" to allocate. The fees billed by Shute and Oxford are based on their professional experience and comparable rates for similar professionals and are income to them not to their respective companies. To eliminate any question about this issue, each now bills Frontier directly, not through any other company.

KRS 278.2207 states:

> (1) The terms for transactions between a utility and its affiliates shall be in accordance with the following:
> (a) Services and products provided to an affiliate by the utility pursuant to a tariff shall be at the tariffed rate, with nontariffed items priced at the utility's fully distributed cost but in no event less than market, or in compliance with the utility's existing USDA, SEC, or FERC approved cost allocation methodology.
> (b) Services and products provided to the utility by an affiliate shall be priced at the affiliate's fully distributed cost **but in no event greater than market** or in compliance with the utility's existing USDA, SEC, or FERC approved cost allocation methodology. (emphasis added).

The responses to various data requests show that the fees paid to Shute and Oxford are below market. Even if the non-Kentucky companies are considered affiliates, Frontier has not violated the statute. Because the statute is intended to apply to situations of direct cost sharing across the range of corporate expenses, it simply does not apply to Frontier. As the Commission stated in the final order in Administrative Case 369, February 18, 2000, p. 2:

> The result of imposing these regulatory requirements on all utilities may not be in the best interests of the customers the Code of Conduct is designed to protect. To avoid such an unintended consequence, the Code of Conduct will not be

applicable to non-profit utilities, cooperatives, associations, districts, and small for-profit utilities. Due to the size of these utilities, it may not be feasible for them to comply with the provisions of the Code of Conduct and the cost of complying with the code may outweigh any benefits to the customers. These smaller utilities have a minimal level of nonregulated activity at this time.

The fees involved in this case billed to Frontier by Shute through Pipeline Solutions is $41,550.00 for work on the rate case in 2017. IGS billed $1515.00 for Oxford work on the rate case. Both billed for travel expenses to the hearing. The total fees billed by Shute and Oxford for 2017-2018 are:

Fees for rate case were $41,550.00 + $1515.00 above,
Fees for other work were $31,575.00 Shute and $21,488.00 Oxford
Total $96,128.00

Frontier also paid Pinedale for accounting fees associated with the rate case. PNG billed $19,800.00 for work on the rate case (plus travel expenses) and $3600.00 for other work during the year. Frontier has been billed $7680.00 by Pinedale for GIS services in 2017.

Frontier's total operating expenses for 2017:

Non-Gas Operating expenses including Interest & Depreciation: $2,086,000 for Frontier plus $147,000 for Auxier = $2,233,000.

As the invoices provided in Post Hearing Response 5, PSC Third Response # 4 and Post Hearing Brief exhibit 4 show, these fees are below market and are approximately 4% of Frontier's operating expenses. These responses show that Frontier billed $75.00 per hour for Shute. Yet, Pipeline Solutions bills similar services at $160.00-$180.00 per hour. Summit Engineering of Lexington performed utility work for

Frontier and others on the Ky DOT Mountain Parkway project at Salyersville. Frontier submitted a sample invoice, where Principals are billed at $130 per hour, Sr Engineers at $105, and starting engineers and GIS techs at $82 and $72 per hour respectively. These are civil engineers without expertise in natural gas or DOT pipeline safety regulations, utility rates, or the daily operation of gas utilities. (Response to AG's Supplemental Request, #4). For another example, Frontier hires an experienced former gas manager (not an engineer) for onsite OQ training at $125 per hour. All these data emphasize that the Frontier principals with 40+ years of gas pipeline & utility experience could charge well above $75 per hour. Given the modest amount of services provided to Frontier by these owners, the discounted fees and the cost that will be incurred in developing an allocation method, there is no need for a cost allocation manual.

The record shows that Frontier has no non-Kentucky affiliates as defined in the statutes; that none of the Frontier members individually or collectively through their non-Kentucky corporations control Frontier; that Frontier does not make any charges to any member owned non-Kentucky company; that the fees billed to Frontier by its members are below market; and that the cost and benefit of a detailed cost allocation manual for minimal periodic costs is unnecessary.

For these reasons, Frontier requests a waiver if needed from the requirements of KRS 278.2201 to KRS 278.2213.

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Certificate:

I certify that a copy of this Motion was mailed to the Attorney General, Capital Building, Frankfort, KY 40601 this the 9 day of August, 2018.

John N. Hughes