

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC JOINT APPLICATION OF	)	
ESSENTIAL UTILITIES, INC., LDC FUNDING,	)	
LLC, LDC HOLDING LLC, PNG COMPANIES	)	CASE NO.
LLC, AND DELTA NATURAL GAS COMPANY,	)	2021-00283
INC. FOR APPROVAL OF AN INDIRECT	)	
CHANGE OF CONTROL OF DELTA NATURAL	)	
GAS COMPANY, INC.	)	

ORDER

On July 7, 2021, Essential Utilities, Inc. (Essential Utilities), LDC Funding, LLC (LDC Funding), LDC Holding LLC (LDC Holding), PNG Companies LLC (PNG), and Delta Natural Gas Company, Inc. (Delta) (collectively, Joint Applicants), pursuant to KRS 278.020(6), filed an application seeking Commission approval of the indirect acquisition of control of Delta by LDC Funding, upon the merger of LDC Holdings into LDC Funding. The Joint Applicants responded to two rounds of data requests. There are no intervenors in this case.

On August 26, 2021, the Joint Applicants filed a motion noting that the case record is robust and requesting that the matter be submitted for a decision based on the written record. The Commission concludes that the record is sufficient and that a hearing is not in the public interest, and finds that the motion should be granted. The matter stands submitted to the Commission for a decision based upon the evidentiary record.

## LEGAL STANDARD

The Joint Applicants filed their application pursuant to KRS 278.020(6)-(7).

KRS 278.020(6) states 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.

To satisfy the provisions of KRS 278.020(6), the Joint Applicants must demonstrate, that under the proposed restructuring, they will maintain the “financial, technical, and managerial abilities to provide reasonable service.”

In addition, the Joint Applicants seek a declaration that the proposed reorganization is exempt from KRS 278.020(7), pursuant to KRS 278.020(8).<sup>1</sup> KRS 278.020(7) provides that no entity “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 same section further provides that “[t]he 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.”<sup>2</sup> There are a limited number of exceptions to the need for prior approval under KRS 278.020(7). Those exceptions, set forth in KRS 278.020(8), include the acquisition of control of a utility “by an acquirer who directly, or indirectly through one (1) or more intermediaries, controls, or

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<sup>1</sup> Application at 7–8, paragraph 16.

<sup>2</sup> KRS 278.020(7).

is controlled by, or is under common control with, the utility, including any entity created at the direction of such utility for purposes of corporate reorganization.”<sup>3</sup>

### PROPOSED RESTRUCTURING

The Joint Applicants proposed to reorganize and consolidate its current corporate structure in order to absorb a redundant corporate entity and streamline management and operations within the overall Essential Utilities corporate structure.<sup>4</sup> In particular, the Joint Applicants seek Commission approval for an indirect acquisition of control of Delta by LDC Funding.<sup>5</sup> LDC Funding would also be consolidated with LDC Holdings into a single entity, leaving LDC Funding as the only surviving company.<sup>6</sup> The Joint Applicants stated that under the proposed restructuring, Essential Utilities, Delta’s ultimate parent company, would continue to retain ultimate control of Delta, and that no changes would occur to the corporate structure, operation, management, or personnel of Delta following the change.<sup>7</sup>

The Joint Applicants specified that Delta would remain wholly owned by its direct corporate parent, PNG; PNG would be wholly owned by LDC Funding; and LDC Funding would be wholly owned by Essential Utilities.<sup>8</sup> Additionally, the Joint Applicants confirmed that the proposed restructuring would have no effect on the financial structure of Delta, would not impose any cost or expense on Delta, would have no effect on Delta’s rates or

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<sup>3</sup> KRS 278.020(8)(b).

<sup>4</sup> Application at 5, paragraph 9.

<sup>5</sup> *Id.* at 1.

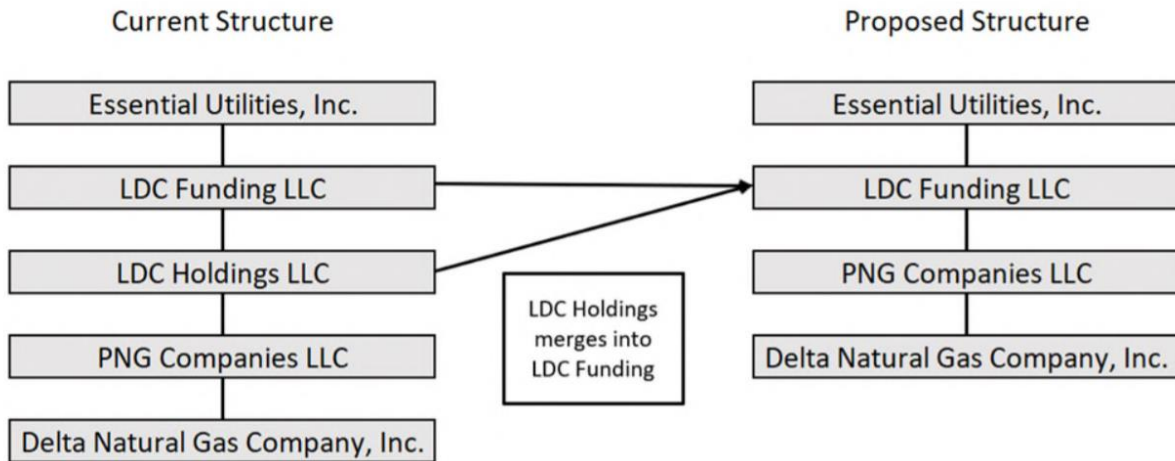
<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Id.* at 4–5, paragraph 8 and 9.

service, and would have no effect on Delta’s continuing ability to provide safe and reliable service at the lowest reasonable cost.<sup>9</sup> The Joint Applicants were unable to quantify any savings resulting from the proposed merger to Delta ratepayers at this time.<sup>10</sup>

The Joint Applicants’ proposed restructuring is summarized in the graphic below:



### BACKGROUND

Essential Utilities, previously known as Aqua America, Inc., a publicly held corporation organized under the laws of Pennsylvania, is the direct owner of LDC Funding and the indirect owner of LDC Holdings, PNG, and Delta.<sup>11</sup> Essential Utilities’ indirect ownership over Delta was approved in Case No. 2018-00369.<sup>12</sup> In that proceeding, the

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

<sup>10</sup> Joint Applicants’ Responses to Staff’s First Request for Information (Staff’s First Request), item 18.

<sup>11</sup> Application at 2–3, paragraph 1 and 5.

<sup>12</sup> Case No. 2018-00369, *Electronic Joint Application of Aqua America, Inc., Steelriver Infrastructure Fund North America LP, Steelriver LDC Investments LP, LDC Parent LLC, LDC Funding LLC, LDC Holdings LLC, PNG Companies LLC, Peoples Gas KY LLC, and Delta Natural Gas Company, Inc. for Approval of an Acquisition of Ownership and Control of PNG Companies LLC and Delta Natural Gas Company, Inc.* (Ky. PSC Mar. 13, 2019).

Commission found that Essential Utilities had the financial, technical, and managerial abilities to provide reasonable utility service.<sup>13</sup>

PNG, a limited liability company organized under the laws of Delaware, is the direct owner of Delta as approved in Case No. 2017-00125.<sup>14</sup> In that proceeding, the Commission found that PNG has the financial, technical, and managerial abilities to provide reasonable utility service.<sup>15</sup>

Delta is a Kentucky corporation, in good standing, providing gas service to approximately 35,618 customers<sup>16</sup> in 32 Kentucky counties, including: Bath, Estill, Montgomery, Menifee, Madison, Powell, Garrard, Jackson, Lee, Bourbon, Jessamine, Rowan, Bell, Knox, Whitley, Laurel, Clay, Leslie, Fayette, Fleming, Clark, Robertson, Mason, Lawrence, Johnson, Martin, Magoffin, Floyd, Pike, Perry, Knott, and Letcher.<sup>17</sup>

#### DISCUSSION AND FINDINGS

The Joint Applicants contended that the proposed corporate reorganization satisfies the requirements of KRS 278.020(6).<sup>18</sup> The Joint Applicants specifically note that the indirect acquiring entity, LDC Funding, already has indirect ownership and control of Delta, and that the Commission recently determined that the Joint Applicants have “the financial, technical, and managerial abilities to provide reasonable utility service,” required

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<sup>13</sup> *Id.* at 12, finding paragraph 1.

<sup>14</sup> Application at 3, paragraph 2; See also Case No. 2017-00125, *Electronic Joint Application of PNG Companies LLC, Drake Merger Sub Inc., and Delta Natural Gas Company, Inc. for Approval of an Acquisition of Ownership and Control of Delta Natural Gas Company, Inc.* (Ky. PSC July 13, 2017).

<sup>15</sup> *Id.* at 8, finding paragraph 1.

<sup>16</sup> *Annual Report of Delta Natural Gas Company, Inc. to the Kentucky Public Service Commission for the Year Ended December 31, 2020* at 5.

<sup>17</sup> Application at 2, paragraph 1.

<sup>18</sup> *Id.* at 7, paragraph 15.

by KRS 278.020(6), in Case Nos. 2018-00369 and 2017-00125.<sup>19</sup> In addition, the Joint Applicants stated that none of Delta's, PNG's, LDC Funding's, or Essential's management or personnel will change as a result of the proposed restructuring.<sup>20</sup> Moreover, the Joint Applicants averred that the proposed restructuring will have no adverse impact on any of the post-merger Joint Applicants' financial, technical, and managerial abilities to provide reasonable utility service through Delta.<sup>21</sup>

The Joint Applicants also contend that the proposed corporate reorganization is exempt from the requirements of KRS 278.020(7), pursuant to KRS 278.020(8)(b), which provides that KRS 278.020(7) does not apply when the utility being acquired is directly or indirectly under common control with the acquiring utility.<sup>22</sup> The Commission finds that the proposed reorganization is exempt from the provisions of KRS 278.020(7), because Delta will be indirectly acquired by LDC Funding, which is already in indirect control of Delta, and both Delta and LDC Funding will remain under the common control of Essential Utilities, thus satisfying KRS 278.020(8)(b).

The Commission further finds that that the Joint Applicants satisfied the legal standards established in KRS 278.020(6) for the following reasons. The Commission recently found that Essential Utilities and PNG have the financial, technical, and managerial abilities to provide reasonable service, primarily due to commitments made by Essential Utilities and PNG.<sup>23</sup> The proposed transaction does not disrupt or impact

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<sup>19</sup> *Id.* at 7, paragraph 15.

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

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

<sup>22</sup> *Id.* at 7, paragraph 14.

<sup>23</sup> See Case No. 2018-00369, *Aqua America, Inc.*, (Ky. PSC Mar. 13, 2019) Order at 12–13.

those commitments, which remain in effect. Further, no change will be made to the operation or management of Delta as a result of the proposed transaction. Finally, the proposed restructuring will have no effect on the financial structure of Delta, and will not impose any cost or expense on those entities, and will have no effect on the Delta's rates or service. For these reasons, the Commission finds that the proposed corporate reorganization is approved.

IT IS THEREFORE ORDERED that:

1. Delta's motion to submit this matter for a decision on the written record is granted.
2. The proposed corporate reorganization that will result in the indirect acquisition of control of Delta by LDC Funding, upon the merger of LDC Holdings into LDC Funding, as described in the application, is approved.
3. The Joint Applicants shall notify the Commission in writing within seven days of the reorganization being completed. If it has not been completed within six months of the date of this Order, the Joint Applicants shall provide a written status report to the Commission every 30 days thereafter.
4. Any material revision to the proposed reorganization shall require approval by the Commission in order for the amendment to be effective.
5. Following the completion of the approved corporate reorganization, the Joint Applicants shall not transfer ownership of, or control, or the right to control Delta, by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval of the Commission.
6. This case is closed and removed from the Commission's docket.

By the Commission



ATTEST:

  
Executive Director



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