

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF GAS NATURAL, INC.)	
AND KENTUCKY ENERGY DEVELOPMENT,)	CASE NO.
LLC FOR AN ORDER APPROVING A)	2012-00029
TRANSFER AND ACQUISITION OF)	
OWNERSHIP AND CONTROL OF PUBLIC)	
GAS COMPANY, INC)	

O R D E R

On January 24, 2012, Gas Natural, Inc. (“Gas Natural”) and Kentucky Energy Development, LLC (“Kentucky Energy”) (collectively, the “Joint Applicants”) filed a joint application requesting Commission approval for the acquisition by Gas Natural from Kentucky Energy of all of the issued and outstanding capital stock of Public Gas Company, Inc. (“Public Gas”). By this Order, the Commission grants approval of the requested transfer.

PARTIES TO THE TRANSACTION

Gas Natural is a holding company whose affiliated wholly-owned utility companies provide retail natural gas distribution service to approximately 63,500 customers in the states of Maine, Montana, North Carolina, Ohio, Pennsylvania, and Wyoming.¹ It is a corporation organized and existing under the laws of the State of Ohio with its principal office located at 8500 Station Street, Suite 100, Mentor, Ohio, 44060.²

¹ Joint Application at 1.

² *Id.* See also Exhibit 1.

Kentucky Energy is a Limited Liability Company organized under the laws of the Commonwealth of Kentucky and is in good standing with the Office of the Kentucky Secretary of State.³ Its principal office is located at 220 Lexington Green Circle, Suite #130, Lexington, Kentucky 40503.⁴ Kentucky Energy owns 100 percent of the capital stock of Public Gas.⁵

Public Gas is a local gas distribution company that serves approximately 1,581 customers in Breathitt, Jackson, Johnson, Lawrence, Lee, Magoffin, Morgan, and Wolfe counties,⁶ and is a utility subject to the Commission's jurisdiction.⁷ Public Gas has been in operation since April 6, 1979 and is in good standing with the Office of the Kentucky Secretary of State.⁸

OVERVIEW OF THE TRANSACTION

Gas Natural and Kentucky Energy entered into a Stock Purchase Agreement ("Agreement") on November 11, 2011, which provided that Kentucky Energy would sell to Gas Natural 100 percent of the issued and outstanding capital stock of Public Gas, in accordance with the terms and subject to the conditions set forth in the Agreement.⁹ In

³ See Kentucky Secretary of State Online Database, available at [https://app.sos.ky.gov/ftshow/\(S\(2plzmq222ejqyqxlq4wf455\)\)/default.aspx?path=ftsearch&id=0523965&ct=06&cs=99999](https://app.sos.ky.gov/ftshow/(S(2plzmq222ejqyqxlq4wf455))/default.aspx?path=ftsearch&id=0523965&ct=06&cs=99999).

⁴ Joint Application at 2.

⁵ *Id.* In 2002, the Commission approved Kentucky Energy's acquisition of Public Gas Company, Inc. See Case No. 2002-00374, *Joint Application of Public Gas Company, Its Shareholders, and Kentucky Energy Development, LLC for an Order Approving a Transfer and Acquisition of Ownership and Control* (Ky. PSC Dec. 10, 2002).

⁶ *Id.*

⁷ KRS 278.010(3)(b).

⁸ See Kentucky Secretary of State Online Database, available at [https://app.sos.ky.gov/ftshow/\(S\(tljrbrbr55m5iucsvyw55\)\)/default.aspx?path=ftsearch&id=0148637&ct=09&cs=99998](https://app.sos.ky.gov/ftshow/(S(tljrbrbr55m5iucsvyw55))/default.aspx?path=ftsearch&id=0148637&ct=09&cs=99998).

⁹ Joint Application, Exhibit 2, *Stock Purchase Agreement* at 1.

consideration of this proposed transfer, Gas Natural will pay \$1.6 million,¹⁰ with the purchase price including an amount equal to Kentucky Energy's \$300,000 account payable to its affiliate, Jefferson Gas, at closing, with the remainder paid in immediately-available funds at closing.¹¹ There is a Customer Price Adjustment provision in the Agreement pursuant to which the Purchase Price will be adjusted if Public Gas has less than 1,531 customers at the time of closing. The sale and purchase of the capital stock of Public Gas has received all necessary approvals from the Board of Directors of Gas Natural and the Members of Kentucky Energy, with the closing subject only to the Commission's approval.¹²

Following the transfer of Public Gas's capital stock to Gas Natural, Public Gas will be operated by Gas Natural in the same manner as it is now being operated, including the retention and employment of Public Gas's current employees, as well as acquiring gas for resale pursuant to its gas purchase agreement with Jefferson Gas, LLC ("Jefferson Gas").¹³ "Public Gas will remain as the 'utility' under KRS 278.010(3) owning, controlling, operating, and managing the facilities used to distribute natural gas to consumers [N]one of Public Gas's 'rates, rules, classifications or administrative regulations' will change."¹⁴ Because this is a sale and purchase of the stock of Public Gas, "the retail customers of Public Gas will enjoy a transparent and seamless transition

¹⁰ *Id.* at 4.

¹¹ *Id.*

¹² *Id.* at 6.

¹³ *Id.* at 3.

¹⁴ *Id.* at 5.

without any adverse impact on the quality of natural gas distribution services they currently receive.”¹⁵

PROCEDURE

Gas Natural responded to Commission Staff's data request on March 7, 2012. After carefully reviewing the information submitted, the Commission finds that the record contains sufficient evidence for a ruling on the proposed transaction. There are no intervenors in this proceeding.

STATUTORY PROVISIONS

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).

The Commission must also determine that the acquisition is made in accordance with the law, is for a proper purpose, and is consistent with the public interest.¹⁶

DISCUSSION

Financial, Technical, and Managerial Ability Standard

The Joint Applicants have provided information to support their claim that Gas Natural has the ability to provide reasonable service if the Commission approves Gas Natural's purchase of Public Gas's capital stock from Kentucky Energy. Joint

¹⁵ *Id. at 6.*

¹⁶ KRS 278.020(6).

Applicants state that Gas Natural has the financial, technical, and managerial ability to provide service to Public Gas's customers and thus meet the requirements of KRS 278.020(5). Gas Natural is a holding company that was originally incorporated in Montana in 1909 and reorganized as a holding company in 2009 under the name Energy, Inc.¹⁷ It was renamed Gas Natural, Inc. and incorporated under Ohio law in July, 2010.¹⁸ Its stock is publicly traded on the New York Stock Exchange Amex under the ticker symbol "EGAS".¹⁹ As of September 19, 2011, it had a market capitalization of \$87.55 million and total shares outstanding of 8.15 million. Net income for the nine months ending September 2011 was \$4.8 million, 87 percent of which was derived from its natural gas utility operations.²⁰

After the transfer, Public Gas will retain its three current employees, each of whom has operational and technical expertise and experience, and Public Gas will have the additional expertise of both Kevin J. Degenstein and Thomas J. Smith to rely upon.²¹ Mr. Degenstein, the President and Chief Operating Officer of Gas Natural, is a Registered Professional Engineer who held various operating positions at Nicor Gas, an Illinois natural gas utility, before joining Energy West (Gas Natural's public utility operating in Montana and Wyoming) in 2006.²² Mr. Smith, Gas Natural's Chief

¹⁷ Direct Testimony of Thomas J. Smith at 2.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Joint Application at 3-4.

²¹ *Id.* at 3; See also Direct Testimony of Thomas J. Smith at 5.

²² Joint Application at 3.

Financial Officer since 2007, will serve as president of Public Gas after the transfer. He is a Certified Public Accountant and is currently the President of Brainard Gas Corporation, Orwell Natural Gas Company, and Northeast Ohio Natural Gas Corporation, all wholly-owned by Gas Natural, which collectively serve approximately 24,000 retail customers in Ohio and Pennsylvania.²³ In addition, Public Gas will have the opportunity to purchase operational support from Jefferson Gas, Kentucky Energy's affiliate, and to lease office and storage space from Kentucky Energy.²⁴

After considering the evidence submitted in the record, the Commission finds that the proposed acquisition of Public Gas by Gas Natural from Kentucky Energy meets the standards set forth in KRS Chapter 278. Gas Natural has provided sufficient evidence to support its assertion that it has the financial ability to provide reasonable service to Public Gas customers. Given the retention of current Public Gas employees and the management- and energy-related experience and expertise of Gas Natural's principals, the Commission finds that Gas Natural has also demonstrated the managerial and technical abilities necessary to provide reasonable service and will maintain both the level and quality of service currently received by Public Gas customers. The Commission further finds that the proposed transaction will be made in accordance with the law, does not violate any statutory prohibition, and is consistent with the public interest.

²³ *Id.* at 3-4.

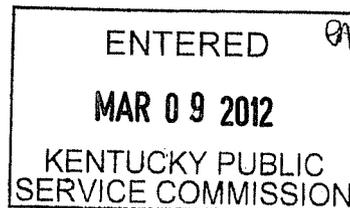
²⁴ *Id.* at 3.

The Commission, having reviewed the evidence of record and being otherwise sufficiently advised, HEREBY ORDERS that:

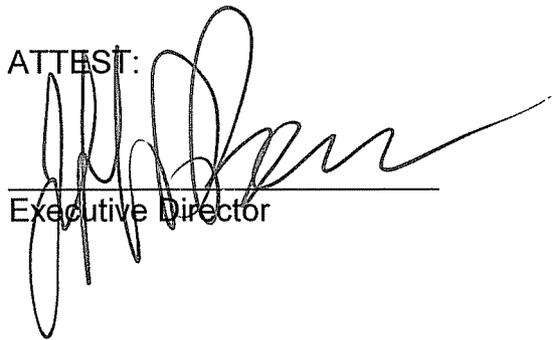
1. The application for approval of the transfer of Public Gas stock from Kentucky Energy to Gas Natural is approved.

2. Following the transfer of Public Gas's capital stock to Gas Natural, Public Gas will continue as the "utility," pursuant to KRS 278.010(3), to the exclusion of Gas Natural or any of its affiliates.

By the Commission



ATTEST:



Executive Director

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