

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF ESSENTIAL)	
UTILITIES, INC., PNG COMPANIES LLC,)	
PEOPLES GAS KY LLC, AND DELTA NATURAL)	CASE NO.
GAS COMPANY, INC. FOR (1) A DECLARATORY)	2020-00346
ORDER AND (2) INCREASE IN RATES FOR)	
PEOPLES GAS KY LLC)	

ORDER

On October 27, 2020, Essential Utilities, Inc. (Essential), PNG Companies LLC (PNG), Peoples Gas KY LLC (Peoples KY), and Delta Natural Gas Company, Inc. (Delta), (collectively, Joint Applicants) submitted a joint application for (1) a declaratory order confirming that under KRS 278.020 Commission approval is not required for ownership of Peoples KY to be transferred to Delta, and (2) Commission approval of a rate increase for Peoples KY, setting the rates for Peoples KY to Delta's current rate for farm tap service. Joint Applicants assert that Commission approval of Peoples KY transfer to Delta is not required, because KRS 278.020(6)–(7) only applies to utilities as defined in KRS 278.010(3). Joint Applicants maintain that since the Commission has affirmed that Peoples KY is a farm-tap system and not a public utility,¹ the Commission has no jurisdiction to review the transfer under KRS 278.020.

However, in Case No. 2020-00028, the Commission found that requiring Commission approval under KRS 278.020(1)(a) for a utility's acquisition of a nonutility

¹ Case No. 2018-00263, *Georgia Johnson v. Peoples Gas KY, LLC* (Ky. PSC Mar. 27, 2020).

ensures that the Commission discharges its statutory duty to ensure that the acquiring utility's ability to provide adequate service at fair, just and reasonable rates is not impaired.² In doing so, the Commission acknowledged its decision was a departure from previous decisions of the Commission in which the Commission concluded that KRS 278.020 did not apply to a utility's acquisition of a municipal utility system, and neither was Commission approval necessary.³ The Commission found that those decisions rested upon a flawed reading of KRS 278.020 and an incorrect rejection of the Commission's plenary powers in general to ensure that utilities provide adequate and reasonable service at fair, just and reasonable rates.⁴ The Commission concluded that its previous decision to not enforce KRS 278.020(1)(a) in certain acquisitions is not a bar to the Commission altering its interpretation of KRS 278.020 and the Commission thereafter requiring its approval before a utility may acquire the system of a nonjurisdictional utility.⁵

Having reviewed Joint Applicants' application, the Commission finds that an investigation will be necessary to determine the applicability of KRS 278.020 to the proposed transaction. Assuming, *arguendo*, that KRS 278.020 does apply to the proposed transaction, KRS 278.020(7) requires that the Commission issue an Order approving or denying an application within 60 days of the filing of an application. The Commission, however, may extend that period for an additional 60 days for good cause.

² Case No. 2020-00028, *Electronic Proposed Acquisition by Bluegrass Water Utility Operating Company, LLC of Wastewater System Facilities and Subsequent Tariffed Service to Users Presently Served by those Facilities*, (Ky. PSC June 19, 2020), final Order at 14.

³ *Id.* at 15.

⁴ *Id.*

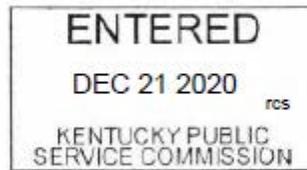
⁵ *Id.* at 15–16.

Due to the current state of emergency that has stressed the Commission's administrative resources, in addition to the issues presented to the Commission in the Joint Applicants' application, the Commission will not be able to issue an Order addressing the Joint Applicants' application within 60 days of the filing of the application. The Commission therefore finds that good cause exists, pursuant to KRS 278.020(7), to continue Joint Applicants' application an additional 60 days.

IT IS THEREFORE ORDERED that the time in which the Commission shall render its decision on Joint Applicants' application is extended an additional 60 days from December 28, 2020, to February 26, 2021.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

By the Commission



ATTEST:


Executive Director

*Peoples Gas KY, LLC
375 North Shore Drive
Suite 600
Pittsburgh, PA 15212

*John B Brown
Chief Financial Officer
Delta Natural Gas Company, Inc.
3617 Lexington Road
Winchester, KY 40391

*Kimberly Joyce
Essential Utilities, Inc. 762 W Lancaster Ave.
Bryn Mawr, PENNSYLVANIA 19010

*Monica Braun
STOLL KEENON OGDEN PLLC
300 West Vine Street
Suite 2100
Lexington, KENTUCKY 40507-1801

*Delta Natural Gas Company, Inc.
3617 Lexington Road
Winchester, KY 40391