

COMMONWEALTH OF KENTUCKY
BEFORE THE ENERGY REGULATORY COMMISSION

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In the Matter of:

THE APPLICATION OF DELTA)
NATURAL GAS COMPANY, INC.)
FOR AN ORDER AUTHORIZING)
THE ISSUANCE OF 750,000)
SHARES OF COMMON STOCK;)
AUTHORIZING THE PURCHASE)
BY DELTA NATURAL GAS COM-)
PANY, INC. OF ALL THE)
ASSETS OF PEOPLES GAS)
COMPANY OF KENTUCKY AND)
CERTAIN TRANSMISSION FA-)
CILITIES OF WISER OIL)
COMPANY)

CASE NO. 8025

ORDER

Preface

On October 31, 1980, Delta Natural Gas Company, Inc. (hereinafter referred to as "Delta") filed with this Commission its duly verified application seeking authority to issue and sell 750,000 shares of common stock at a par value of \$1.00 per share; seeking an order authorizing the purchase by Delta of all the assets of Peoples Gas Company of Kentucky (hereinafter referred to as "Peoples") and seeking an order authorizing the purchase by Delta of certain transmission facilities of the Wiser Oil Company (hereinafter referred to as "Wiser"). The proceeds from the proposed sale of common stock are to be used to purchase the Peoples' assets and to retire some existing short term debt. The terms and conditions of the proposed common stock issue and sale are set forth in Exhibit D to the Application and the terms and conditions of the proposed purchases by Delta are set forth in the letter agreement (Exhibit F).

The case was set for hearing at the Commission's office in Frankfort, Kentucky, on December 10, 1980, and all parties of interest were notified in the manner prescribed by the Kentucky Revised Statutes. Pursuant to motion of Delta's counsel, the hearing was rescheduled to December 16, 1980, and all parties

were notified in the manner prescribed by the Kentucky Revised Statutes. At the December 16, 1980, hearing direct testimony and cross examination of Delta was conducted and this case was submitted to the Commission for decision. There are no intervenors of record in this matter.

DISCUSSION

At the hearing on December 16, 1980, Delta offered testimony which established that Wiser, Peoples and Delta had reached an agreement under the terms of which Peoples would sell and Delta would purchase all of the assets of Peoples, a natural gas distribution company with operations in Corbin, Barbourville, Manchester, Burning Springs and Oneida, together with farm tap customers along Wiser's natural gas transmission pipelines in southeastern Kentucky. It was established that Peoples serves approximately 8,500 customers in its service area. It was further established that Peoples is a wholly owned subsidiary of Wiser. According to testimony offered by Wiser's treasurer, Paul H. Eddy, Wiser, because of business reasons of its own, has made a decision to divest itself of Peoples.

Delta further established during the course of the hearing that it had reached an agreement with Wiser under the terms of which Wiser would sell and Delta would purchase within one (1) year after the purchase of the Peoples System, some 57 miles of Wiser's natural gas transmission pipelines and appurtenant facilities. Those pipelines extend generally from the vicinity of Manchester to London and Corbin and from Wiser's storage and production fields to the east of Corbin in Knox County into Corbin. Mr. Eddy testified that the transmission facilities included in the proposed purchase and sale agreement are an integral part of the Peoples' natural gas distribution system in that they are the means by which natural gas is delivered to London and Corbin.

The letter agreement by and among Delta, Wiser and Peoples, sets forth the formula by which the proposed purchase price for both the Peoples' natural gas distribution system and the Wiser transmission facilities is to be established. The letter agreement further establishes that the agreement by and among the parties is subject to the approval of this Commission.

By testimony offered by Delta and statements of Delta's counsel, it was learned that certain changes had been proposed in the letter agreement and that the form of the transaction involving the purchase of the Peoples' natural gas distribution system may be changed from an asset transaction to a stock transaction. Such changes do not appear to be material or require any amendment to the Application herein nor affect this Commission's decision.

Delta further offered testimony establishing that it proposed to issue and sell up to 750,000 shares of its common stock at a \$1.00 par value. The stock is to be sold substantially in accordance with a letter of intent between Delta and Thomson McKinnon Securities, Inc. The proposed issue and sale of common stock is a public offering in accordance with an underwriting agreement to be effected between Delta and Thomson McKinnon Securities, Inc. The proceeds from the proposed issue and sale of common stock will be used by Delta to acquire the Peoples' natural gas distribution system and to retire some of Delta's existing short term bank loans.

Delta testified that it has concluded that the proposed purchase of the Peoples' natural gas distribution system and Wiser transmission facilities would enable Delta to provide better service to its existing customers and to the existing Peoples' customers and that said purchases would enhance the flexibility and reliability of the natural gas supply situation for both the Delta customers and the Peoples' customers. Delta also offered testimony to the effect that it had concluded that the capital structure changes and the public market for its common stock that would result after the

proposed issue and sale of its common stock would be beneficial to its customers and Peoples' customers after acquisition of said system in that Delta would be better able to attract capital which would assist in providing service to those customers.

FINDINGS

The Commission, after consideration of the Application, all the evidence of record and being advised, is of the opinion and finds:

1. That the proposed sale of common stock is for lawful objects within the corporate purposes of Delta, is necessary and appropriate for and consistent with the proper performance by the utility of its service to the public and will not impair its ability to perform that service and is reasonably necessary and appropriate for such purposes.

2. That Wiser, Peoples and Delta have agreed, subject to this Commission's approval, to a sale to Delta of the Peoples' natural gas distribution system.

3. That Wiser, Peoples and Delta have agreed, subject to this Commission's approval, to the sale by Wiser and the purchase by Delta, within one (1) year from the date of the purchase of the Peoples' natural gas distribution system, of certain natural gas transmission facilities more particularly described in Exhibit F to the Application and set forth in green ink on Delta Exhibit 2 introduced at the hearing.

4. That the above-described transmission facilities are used, useful and necessary in the operation of the Peoples' natural gas distribution system and, although currently owned by Wiser, are an integral part of the Peoples' natural gas distribution system.

5. That Delta has demonstrated that it is fully capable of acquiring the Peoples' natural gas distribution system and the Wiser transmission facilities without impairing its ability to perform its service to the public.

6. That public convenience and necessity requires that Delta be allowed to purchase the Peoples' natural gas distribution system and the above-described transmission facilities substantially in accordance with the terms and conditions set forth in Exhibit F to the Application.

7. That the terms and conditions of the letter agreement between Wiser Oil Company, Delta Natural Gas Company and Peoples Gas Company, dated October 20, 1980 and filed with this Commission, provide the basis for the ensuing transactions and the Commission's findings.

8. That should the terms and conditions set out in the October 20, 1980 agreement be materially changed in further negotiations, the Commission should be notified immediately and until further Commission action is taken, the following orders in this matter should not be executed.

9. That Delta should advise the Commission of the closing date of the purchase of the assets of Peoples Gas Company and should file with the Commission within ten (10) days of the closing date, the formal Purchase and Sale Agreement entered into by the parties of interest.

10. That Delta should advise the Commission of the date of acquisition of the before-described transmission lines from Wiser.

11. That Delta and Peoples should file with this Commission their financial statements as of the effective date of the purchase-sale transaction and the journal entries necessary to complete this transaction.

12. That Delta and Wiser should file with this Commission their financial statements at the date of the purchase-sale of the transmission facilities and the journal entries necessary to complete this transaction.

13. That Wiser should be required to file Peoples Annual Report to this Commission for any portion of a calendar year that Wiser had control and ownership of the subsidiary.

14. That the Commission's Inspection Report of Delta Natural Gas Company, Inc. dated December 4, 1980 should be incorporated as part of the evidence of record in this case as well as Delta's response thereto.

ORDERS

The Commission, on the basis of the matters hereinbefore set forth and the evidentiary record in this case:

HEREBY ORDERS that Delta is authorized to issue and sell up to 750,000 shares of common stock with a par value of \$1.00 per share substantially in accordance with the terms and conditions set out in Exhibit D of the Application.

IT IS FURTHER ORDERED that the funds from the financing authorized herein shall be used only for purposes which have been or shall subsequently be authorized by this Commission upon formal application or permitted without formal application under the laws of the Commonwealth of Kentucky and the rules and regulations of the Kentucky Energy Regulatory Commission of the Commonwealth of Kentucky.

IT IS FURTHER ORDERED that Delta, as soon as reasonably possible, shall file with this Commission a true and accurate copy of the underwriting agreement, a statement setting forth the date or dates of issuance of the securities authorized herein, the number of shares issued, the proceeds from the sale of the issue, all fees and expenses involved in the issuance and distribution thereof and the appropriate journal entries effecting the issue and sale of Delta's common stock approved herein.

IT IS FURTHER ORDERED that Delta be and it is hereby granted a certificate of public convenience and necessity to operate the Peoples' natural gas distribution system and the Wisner transmission facilities substantially in accordance with the terms and conditions set forth in Exhibit F of the Application; provided, however, that nothing contained herein shall constitute approval or disapproval of the natural gas pricing arrangement or the storage charges set forth in Exhibit F of the Application.

IT IS FURTHER ORDERED, that Delta file with this Commission a true and accurate copy of the formal agreement of purchase and sale of the Peoples' natural gas distribution system, a true and accurate copy of the formal agreement of purchase and sale of the Wiser transmission facilities, a true and accurate copy of the gas purchase agreement between Delta and Wiser, and a duly verified document or documents which show the purchase price of the Peoples' natural gas distribution system and the Wiser transmission facilities within ten (10) days after the closing date of the transaction.

IT IS FURTHER ORDERED, that should material changes in the terms and conditions as set out in the letter agreement dated October 20, 1980 between Delta Natural Gas Company, Inc., Wiser Oil Company, Inc., and Peoples Gas Company, Inc., be entered into, Delta should file notice of such changes within three (3) days of said agreement.

IT IS FURTHER ORDERED, that Delta shall file a statement setting forth the date of acquisition of the transmission lines and the facilities appurtenant thereto from the Wiser Oil Company within ten (10) days of said date.

IT IS FURTHER ORDERED, that Delta Natural Gas Company and Peoples Gas Company shall file their financial statements at the date of the purchase-sale transaction together with the journal entries necessary to complete this transaction within thirty (30) days of the transfer.

IT IS FURTHER ORDERED, that Delta Natural Gas Company and Wiser Oil Company shall file with this Commission their financial statements at the date of the purchase-sale transaction of the transmission lines together with the journal entries necessary to complete this transaction within thirty (30) days of this transfer.

IT IS FURTHER ORDERED, that Wiser shall file the Peoples Gas Company Annual Report to this Commission for any portion of a calendar year during which Wiser had control and ownership of the subsidiary.

IT IS FURTHER ORDERED, that the Commission's Inspection Report of Delta Natural Gas Company, Inc. of December 4, 1980 is hereby incorporated as a part of the evidence of record in this case.

IT IS FURTHER ORDERED, that Delta shall respond to the Inspection Report of December 4, 1980 within thirty (30) days of the date of this Order.

Nothing contained herein shall be construed as a finding of value for any purpose or as a warranty on the part of the Commonwealth of Kentucky or any agency thereof as to the securities authorized herein.

Done at Frankfort, Kentucky, this 19th day of December, 1980.

ENERGY REGULATORY COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary