

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE JOINT APPLICATION OF CAPITOL)
RESOURCES, INC. AND DONALD L. RUDDER, AND)
H. RUDDER, AND BRUCE G. HEUBLEIN FOR THE) CASE NO. 91-288
APPROVAL OF THE ACQUISITION OF ALL THE)
CAPITAL SHARES OF PUBLIC GAS COMPANY, INC.)

O R D E R

On August 9, 1991, Capitol Resources, Inc. ("Capitol") and Donald L. Rudder, Anne H. Rudder, and Bruce G. Heublein (the "Rudder Group") petitioned the Commission for approval of the sale of 100 percent of the issued and outstanding capital shares of Public Gas Company ("Public") currently held by Capitol to the Rudder Group. Also submitted for review were the purchase and sale agreement entered into by the joint petitioners dated July 15, 1991 setting forth the terms of the transaction by which Capitol will sell and the Rudder Group will purchase the capital shares of Public.

KRS 278.020(4) provides that the Commission shall approve the transfer "... if the person acquiring the utility has the financial, technical and managerial abilities to provide reasonable service." KRS 278.020(5) further provides that "no [acquirer], whether or not organized under the laws of this state, shall acquire control . . . of any utility furnishing utility service in this state, without having first obtained the approval of the Commission . . . the Commission shall approve any such

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."

The financial capabilities of the Rudder Group are demonstrated by the escrowing of a Letter of Credit for \$1.6 million as collateral security for the purchase of the shares of Public and as collateral security for the purchase of certain other assets which do not require Commission approval.

The Rudder Group intends to employ Kenneth L. Baker and William Johnson as president and manager, respectively. Mr. Baker has a bachelors degree in nuclear engineering and his masters degree in mechanical engineering and has managed several businesses including thoroughbred horse, and oil and gas interests owned by the Rudder Group. Mr. Baker acts as a part time engineering consultant for Southern Gas Company and Energy Management and Services. In his capacity as consultant, Mr. Baker represents that he engages in field engineering work and cost analysis for gas production and transportation. William Johnson has owned and managed the gas distribution operations of Public for the past eight years and will be employed by the Rudder Group to continue to manage Public for a one year period after the purchase of assets is approved.

Members of the Rudder Group have extensive managerial experience, for example Donald L. Rudder owned and operated Rudder Building Services, Inc., a large industrial services corporation, for 40 years and is currently engaged in the breeding and racing of thoroughbred horses in Kentucky and New York. Mr. Rudder also

has oil and gas interests in the state of Kentucky. Ann Rudder was president of the Heublein Medical Foundation for 20 years and is presently serving actively on the Board of Directors of the Institute of Living, Kingswood Oxford School, The Hartford Stage Company, and the Hundred Club of Connecticut, and was a corporator of the Hartford Hospital and Hartford Public Library. Bruce G. Heublein has owned and operated his own commercial dairy farm and owns an interest in K & B Gas, a Kentucky oil and gas partnership.

The purchase and sale agreement attached as Exhibit A to the application filed by the Rudder Group and Capitol provides that at closing Capitol shall sell, transfer, endorse, and deliver all capital shares of Public free of a certain debt to Pikeville National Bank together with the books and records of the company. Article V of the same agreement further provides that the parties shall enter into an escrow agreement with Commerce National Bank of Lexington, Kentucky, for the purpose of guaranteeing payment to Capitol the funds required to satisfy the Rudder Group's payment obligations under the agreement. The Rudder Group will deliver to the escrow agent an Irrevocable Letter of Credit for the benefit of Capitol in an amount equal to the sum of the purchase price for all the assets including the capital shares purchased and sold under the agreement. The Commission notes that in Article 6.10 of the Purchase and Sale Agreement, Public's long-term debt with the Pikeville National Bank is to be satisfied in full by the sellers, Capitol, by the closing date or within 3 business days thereafter. Capitol and the Rudder Group should be aware that a transaction of this nature occurring after closing has the potential to

complicate future Public rate cases. In order to ensure that Public will not remain liable for this debt, the sellers of Public shall satisfy the debt with Pikeville National Bank on or before the closing date.


After consideration of the foregoing and being otherwise sufficiently advised, the Commission finds that the Rudder Group as prospective purchasers have adequately demonstrated financial, managerial and technical expertise to continue to provide reasonable service to those customers served by Public. The Commission further finds that the proposed acquisition is to be made in accordance with the law for a proper purpose and is consistent with the public interest. The Commission further finds that based upon the representations of counsel for the Rudder Group and Capitol, the Rudder Group will continue the operation of the existing gas distribution system to the customers of Public under the existing contracts and rates.

IT IS THEREFORE ORDERED that the proposed transfer of 100 percent of the capital shares of Public to the Rudder Group be and it hereby is approved.

IT IS FURTHER ORDERED that the Rudder Group will continue to operate Public under terms, conditions, and rates currently included in Public's tariff. The Rudder Group shall, within 20 days of closing, re-execute the existing tariffs of Public in the name of an officer of the corporation authorized to execute the tariffs.

Done at Frankfort, Kentucky, this 4th day of October, 1991.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

Commissioner

ATTEST:


Executive Director