

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF ORBIT GAS)	
COMPANY AND ORBIT GAS TRANSMISSION,)	
INC. FOR AUTHORITY AND PERMISSION TO)	CASE NO. 2005-00427
SELL AND PURCHASE THE ORBIT GAS)	
COMPANY NATURAL GAS DISTRIBUTION)	
SYSTEM AND ALL RELATED ASSETS)	

O R D E R

On October 13, 2005, Orbit Gas Company ("Orbit Gas") and Orbit Gas Transmission, Inc. ("Orbit Transmission") jointly applied to the Commission for authority to transfer all of the distribution assets and all related assets of Orbit Gas to Orbit Transmission. In conformity with Commission regulations, Orbit Transmission filed a notice stating that all current tariffs of Orbit Gas would be adopted by Orbit Transmission.¹

Having considered the application and evidence of record, the Commission finds that:

1. Orbit Gas, a Kentucky corporation, is a farm tap and intrastate pipeline system which serves approximately 54 customers in Christian, Hopkins, McLean, and Muhlenberg counties in Kentucky and is a public utility subject to the jurisdiction of the Commission. Its address is P.O. Box 2100, 600 Barrett Boulevard, Henderson, Kentucky 42419-2100.

¹ Exhibit "G" of Joint Application filed October 13, 2005.

2. Orbit Transmission is a Kentucky corporation with offices at 830 Illinois Highway 15 East, Mt. Vernon, Illinois 62864, and Kentucky offices at 600 Barrett Boulevard, Henderson, Kentucky 42420.

3. Orbit Transmission does not presently own any facilities that provide utility service in the Commonwealth of Kentucky.²

4. On September 22, 2005, Orbit Gas and Orbit Transmission entered into an Asset Purchase and Sale Agreement wherein Orbit Transmission would acquire the distribution assets and all related assets of Orbit Gas for a purchase price of \$1,200,000.

5. One of the principal executives of Orbit Transmission is Richard H. Straeter of Mt. Vernon, Illinois. Mr. Straeter is a professional engineer and president of Continental Resources of Illinois, Inc. ("Continental Resources"), which is an oil and gas exploration and production company based in Mt. Vernon, Illinois.

6. The capitalization for Orbit Transmission will be furnished by capital contributions from its stockholders. Orbit Transmission will commence operation without debt other than current trade accounts and accumulated payroll of Orbit Gas.

7. At the time of the transfer, the stockholders and their percentage of ownership of Orbit Transmission will be Mr. Straeter (8 percent), the Harold Hamm HJ Trust (36.8 percent), and the Harold Hamm DST Trust (55.2 percent).

8. The primary management of Orbit Transmission will be provided by Mr. Straeter. Additional management assistance will be provided by Bradley A. Aman, Vice President of Orbit Transmission, who currently serves as Operations and Engineering

² Orbit Transmission has been responsible for the professional management and the day-to-day management of Orbit Gas since October 1, 2005 under the terms of the Asset Purchase and Sale Agreement. See Joint Application, Exhibit C, page 23 of 49.

Manager for Continental Resources, and Nida E. Woodfall, Secretary of Orbit Transmission, who has served in the oil and gas community for over 30 years.

9. Orbit Transmission plans to continue the present operations of the Orbit Gas natural gas system without interruption and states that no basic changes in the operation of the Orbit Gas system is contemplated; that all supply contracts for natural gas are to be retained; and that all sales contracts and “farm tap” sales shall be kept in full force and effect and fully honored. Orbit Transmission also states that adequate supplies of natural gas are available to continue its operations and that all present operating and staff personnel will be retained.

10. Under a petition for confidentiality, financial information was filed for Richard H. Straeter and his wife, Rose Marie Straeter. Financial information was also filed for the Harold Hamm HJ Trust and Harold Hamm DST Trust which stated that they have approximately \$8,000,000 and \$12,000,000, respectively, in cash and investments.

11. Pro forma financial statements filed by Orbit Transmission project a monthly average net income before tax of \$50,158.77.

12. Orbit Transmission proposed to record the transfer at the purchase price rather than the original cost as required by the Uniform System of Accounts Prescribed for Natural Gas Companies (“USoA”). The USoA requires that plant assets be transferred at original cost along with accumulated depreciation on those assets and that all other account balances being transferred be recorded. Recording the transfer of Orbit Gas’s assets to Orbit Transmission in accordance with the USoA will require Orbit Transmission to record a plant acquisition adjustment. The plant acquisition adjustment should be

amortized over the remaining useful life of the assets purchased. The annual amortization may be recorded in account 406, Amortization of Gas Plant Acquisition Adjustments.

Based upon these findings, the Commission makes the following conclusions of law:

1. Orbit Gas is subject to Commission jurisdiction.³
2. Orbit Transmission is not a utility and currently not subject to Commission jurisdiction.⁴
3. Orbit Transmission is a “person” for purposes of KRS Chapter 278.⁵
4. KRS 278.020(5) provides that “[n]o person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission . . . without prior approval by the commission.” As Orbit Transmission is a person and is acquiring ownership of Orbit Gas, this statute is applicable to and requires Commission approval of the proposed transfer.
5. KRS 278.020(6) provides that “[n]o individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an “acquirer”), whether or not organized under the laws of this state, 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.” As Orbit Transmission is acquiring ownership of the assets of Orbit Gas, this statute is applicable to and requires Commission approval of the proposed transfer.

³ KRS 278.010(3)(b).

⁴ KRS 278.010(3).

⁵ KRS 278.010(2).

6. Orbit Transmission has the financial, technical, and managerial abilities to provide reasonable service to the present customers of Orbit Gas.

7. The proposed transfer is in accordance with law, is for a proper purpose, and is consistent with the public interest.

8. Upon completion of the transaction, Orbit Transmission will be subject to Commission jurisdiction.

IT IS THEREFORE ORDERED that:

1. The transfer of the assets of the Orbit Gas system to Orbit Transmission is approved.

2. Within 10 days of completion of the proposed transfer, Orbit Transmission shall notify the Commission in writing of the completion of the transfer.

3. Within 10 days of the completion of the proposed transfer, Orbit Transmission shall file a signed and dated adoption notice in accordance with 807 KAR 5:011, Section 11.

4. Within 10 days of the filing of its adoption notice, Orbit Transmission shall issue and file with the Commission in its own name Orbit Gas's tariff, or such other tariff as it proposes to put into effect in lieu thereof, in the form prescribed in 807 KAR 5:011, Section 11.

5. Within 20 days of the completion of the transfer, Orbit Transmission shall file the journal entries it proposes to record the transferred assets. The acquisitions shall be recorded in accordance with the Uniform System of Accounts Prescribed for Natural Gas Companies.

6. The rate-making treatment of the plant acquisition adjustment and any associated costs (i.e., amortization) shall be deferred until Orbit Transmission's next rate case proceeding.

7. Orbit Gas shall be responsible for submitting to the Commission its financial and statistical reports, as described in 807 KAR 5:006, Section 3, for the period in 2005 in which it owned and operated the transferred assets.

Done at Frankfort, Kentucky, this 8th day of December, 2005.

By the Commission

ATTEST:


Executive Director