

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

<b>THE JOINT APPLICATION OF PNG )</b>	
<b>COMPANIES LLC, DRAKE )</b>	
<b>MERGER SUB INC. AND DELTA )</b>	<b>CASE NO. 2017-00125</b>
<b>NATURAL GAS COMPANY, INC. )</b>	
<b>FOR APPROVAL OF AN )</b>	
<b>ACQUISITION OF OWNERSHIP )</b>	
<b>AND CONTROL OF DELTA )</b>	
<b>NATURAL GAS COMPANY, INC. )</b>	

**PNG COMPANIES LLC AND DRAKE MERGER SUB INC.'S RESPONSE TO THE MOTION TO INTERVENE OF THE KENTUCKY LABORERS DISTRICT COUNCIL**

PNG Companies LLC and Drake Merger Sub Inc. (referred to collectively as "PNG") respectfully submit that the Motion to Intervene ("Motion") of the Kentucky Laborers District Council (the "Union"), filed on April 3, 2017, should be denied because the Union fails to satisfy any of the requirements of permissive intervention under 807 KAR 5:001, §4(11)(b). Specifically, the Union: (1) fails to state a special interest in this proceeding that is not otherwise adequately represented; (2) fails to identify any issues or development of facts that will assist the Commission in fully considering this proceeding; and (3) fails to establish that the Union's invention would not unduly complicate or disrupt this proceeding. Additionally, the Union does not assert that it represents any of the employees of PNG nor does it claim that PNG utilizes its members as contractors. That is with good reason. PNG has no union employees within the Commonwealth of Kentucky. Likewise, PNG does not engage any union contractors within the Commonwealth.

I. **The Union's Motion to Intervene Should be Denied Because the Union Does Not Have a Special Interest in this Proceeding That is Not Otherwise Adequately Represented.**

Permissive intervention is only permitted when the requirements of 807 KAR 5:001, §4(11)(b) are met. The Union fails to meet the first requirement under that regulation: that it have a special interest in this proceeding that is not otherwise adequately represented.

The Union's Motion alleges that the Union, through its affiliated local unions, is the bargaining agent for over 3,600 employees in Kentucky, a third of whom are in pipeline and power plant work.<sup>1</sup> The Union's Motion asserts that the Union has a special interest in the services of PNG and Delta because it has experience with "safety" and because "there is no organization that knows more about workforce development in this industry than the Union."<sup>2</sup>

PNG respectfully submits that these assertions do not rise to the level of a special interest permitting intervention in this proceeding. First, the Union has not alleged that PNG employs any of its members in the Commonwealth of Kentucky, nor does it allege that PNG utilizes its members as contractors in Kentucky. Rightfully so, as PNG does neither. While not overtly stated, a reasonable inference taken from the Motion is that the Union seeks, in some undisclosed way, to further its own commercial interests.

The Union's asserted "interests" are not within the scope of this proceeding, as set forth in KRS 278.020(6) and (7), which is focused upon whether the acquiring entity has the financial, technical, and managerial abilities to provide reasonable service and

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<sup>1</sup> Union's Motion, p. 1, ¶1.

<sup>2</sup> *Id.*, p. 4.

whether the proposed acquisition is made in accordance with the law, for a proper purpose and is consistent with the public interest. The Union's "perspective" on behalf of workers not employed or contracted by PNG simply does not fall within these parameters.

Furthermore, the Commission's discretion with respect to permissive intervention is not unlimited. KRS 278.040(2) imposes a statutory limitation requiring the entity seeking intervention to have an interest in the rates or services of a utility, as those are the only two subjects over which the Commission's jurisdiction extends.<sup>3</sup> The Union does not assert it has any interest in the rates in this proceeding, but asserts only a "special interest in the services of PNG and Delta."<sup>4</sup> The Union identifies the services in which it believes it has an interest as general workplace safety, workforce development, and serving as an advocate for workers.<sup>5</sup> None of these proffered interests falls within the statutory definition of "services" under KRS 278.010(13) which includes, in relevant part, the heat units and pressure of gas and the quality, quantity, and pressure of any commodity or product used or to be used for or in connection with the business of any utility.

Finally, the Union asserts that its "experience representing workers in this industry makes it specially situated to provide a perspective" with respect to whether the requested merger will result in reasonable service to Delta's existing customers.<sup>6</sup> This is an insufficient interest to warrant intervention. The Kentucky Attorney General, not

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<sup>3</sup> *EnviroPower, LLC v. Public Service Com'n of Kentucky*, 2007 WL 289328, \*4 (Ky. App. Feb. 2, 2007); *In the Matter of: Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge* (Case No. 2011-00161) Order, July 15, 2011.

<sup>4</sup> Union's Motion, p. 4.

<sup>5</sup> *Id.*, p. 4.

<sup>6</sup> *Id.*, pp. 4-5.

the Union, has a statutory right, pursuant to KRS 367.150(8)(b), to represent customers' interests in these proceedings. The Attorney General has exercised that statutory right by filing his own motion to intervene in this proceeding on March 16, 2017. The Union has not, and cannot, argue that the Attorney General does not adequately represent the interests of consumers in this proceeding.

In 2011, the Commission found that a similar union did not have a special interest in a Kentucky Utilities proceeding and denied that union's motion to intervene.<sup>7</sup> PNG respectfully requests, based upon that prior precedent and the reasons set forth above, that the Commission likewise deny the Union's Motion.

II. **The Union's Motion to Intervene Should be Denied Because the Union Has Failed to Demonstrate that It Will Present Issues or Develop Facts That Would Assist the Commission.**

The Union also fails to establish that it will present issues or develop facts that would assist the Commission in this proceeding, as required under 807 KAR 5:001, §4(11)(b). The Union asserts that if permitted to intervene it would "evaluate and provide input as to the effect of the proposed merger on Kentucky's natural gas utility workers."<sup>8</sup> However, this issue is beyond the jurisdiction of the Commission's jurisdiction under KRS 278.040(2) as it is not related to the rates or services of a utility.<sup>9</sup>

The Union also proffers that its intervention would assist the Commission in enforcing pipeline safety laws.<sup>10</sup> The Union's presumption that the Commission needs assistance in this regard is not only unfounded, but also unsupported. The Commission

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<sup>7</sup> *In the Matter of: Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge* (Case No. 2011-00161) Order, July 15, 2011.

<sup>8</sup> Union's Motion, p. 5.

<sup>9</sup> *EnviroPower, LLC*, 2007 WL 289328 at \*4 (Ky. App. Feb. 2, 2007)

<sup>10</sup> *Id.*

is well suited and perfectly capable of evaluating, on its own without assistance of the Union, any pipeline safety issues it deems relevant.

Therefore, PNG respectfully requests, based on the reasons set forth above, that the Commission deny the Union's Motion.

**III. The Union's Motion to Intervene Should be Denied Because the Intervention of the Union Could Unduly Complicate or Disrupt this Proceeding.**

Assuming that the Union could establish that it could present issues or develop facts that would assist the Commission (which it cannot), its intervention could unduly complicate and disrupt this proceeding, thus prohibiting permissive intervention under 807 KAR 5:001, §4(11)(b). As shown throughout the Union's Motion, the primary focus of the Union is on workers and workplace development. However, PNG neither employs Kentucky workers represented by the Union nor does it engage Kentucky union contractors. The Union's focus on its own commercial interests, and the likely requests for information regarding workforce issues, is beyond the scope of this proceeding and beyond the jurisdiction of the Commission, as noted above.

As the Commission has previously found in a similar proceeding, the Union should not be granted intervenor status, but rather can participate in this proceeding by filing comments in the record and/or by providing oral comments at the public hearing in this matter.<sup>11</sup> The Union's intervention would unduly complicate or disrupt this proceeding, and therefore the Union's Motion should be denied.

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<sup>11</sup> *In the Matter of: Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge* (Case No. 2011-00161) Order, July 15, 2011.

IV. Conclusion.

For all of the reasons set forth above, PNG respectfully requests that the Commission deny the Union's Motion.

Dated: April 10, 2017.

Respectfully submitted,



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**CERTIFICATE OF COMPLIANCE**

The undersigned counsel for PNG Companies LLC and Drake Merger Sub Inc. hereby certifies that this electronic filing of PNG Companies LLC and Drake Merger Sub Inc.'s Response to Motion to Intervene of the Kentucky Laborers District Council is a true and accurate copy of the same materials being filed in paper medium; that this electronic filing has been transmitted to the Commission electronically on April 10, 2017; that an original and six paper copies in paper medium will be delivered to the Commission within two business days after this date; and that a true and correct paper copy of this electronic filing was served via U.S. Mail on April 10, 2017 upon the following:

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