

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

**In the Matter of:**

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

\* \* \* \* \*

**MOTION OF DELTA NATURAL GAS COMPANY, INC.  
FOR CONFIDENTIAL TREATMENT OF INFORMATION  
IN MINUTES OF BOARD OF DIRECTORS MEETINGS**

---

Delta Natural Gas Company, Inc. (“Delta”) respectfully submits this motion pursuant to 807 KAR 5:001, Section 13 and KRS 61.878(1) for confidential treatment of certain information contained in or attached to minutes of meetings of Delta’s Board of Directors responsive to the Attorney General’s Initial Data Request No. 59. In support of this motion, Delta states as follows:

1. **Identity of Bidders.** The minutes of the September 23, 2016, November 17, 2016, and December 16, 2016, Board of Directors meetings contain the identity of various entities that considered submitting or, in fact, submitted bids for the acquisition of the stock of Delta. Delta has not revealed the identity of the bidders to anyone outside of its Board of Directors, executive officers, advisors and counsel and, thus, the information is not publicly disseminated. The identity of the bidders is confidential and proprietary and would cause Delta, and the bidders, competitive harm if disclosed. In the event the Commission does not approve

the transaction, or in the event the transaction otherwise does not close, Delta would suffer harm if this information were made public and therefore accessible to other potential bidders, as it could lessen competition in a subsequent bidding process and allow other purchasers to bid down the price of Delta. This information is protected from disclosure under KRS 61.878(1)(c) because it is commercial information generally recognized as confidential and its disclosure would cause competitive injury and permit competitors an unfair commercial advantage.

2. **Tudor Pickering Holt & Co Discussion Materials.** Presentations entitled “Discussion Materials” prepared by Tudor Pickering Holt & Co (“TPH”), Delta’s investment banker, are attached to the minutes of the September 23, 2016, December 16, 2016, February 1, 2017, and February 20, 2017, Board meetings. These presentations contain financial analyses prepared by TPH using its proprietary methodologies relating to the contemplated transaction. Delta entered a confidentiality agreement with TPH to which the presentations are subject. The presentations contain analyses consisting of proprietary, non-public information about Delta. Their public dissemination could cause Delta to breach the confidentiality agreement and cause Delta and TPH competitive harm. These presentations are protected from disclosure by KRS 61.878(1)(c). In addition, the September 23, 2016, December 16, 2016, February 1, 2017, presentations are preliminary analyses and are protected from disclosure by KRS 61.878(1)(j). The confidentiality of the presentations also needs to be maintained to prevent a violation of Regulation FD of the Securities and Exchange Commission, which addresses the selective disclosure of information by publicly traded companies.

3. **Mercer Report.** A draft report prepared by the human resources firm, Mercer, entitled “Retention Scenarios” is attached to the minutes of the September 23, 2016, Board meeting. This document should receive confidential treatment for two reasons. First, it is a draft

and, therefore, a preliminary memorandum exempt from disclosure under KRS 61.878(1)(j). Second, the document contains personal information related to compensation about specifically identified individuals. This is personal information exempt from disclosure under KRS 61.878(1)(a). Disclosure of the information would constitute a clearly unwarranted invasion of the personal privacy of those individuals.

4. **January 30, 2017, Letter.** A letter dated January 30, 2017, from PNG Companies, LLC (“PNG”) to TPH is attached to the minutes of the February 1, 2017, Board meeting. This letter is designated “Strictly Confidential” because it contains elements of agreement between Delta and PNG that ultimately became the Agreement and Plan of Merger. This letter, however, does not contain all the terms of the Agreement and Plan of Merger and contains some elements that did not become part of the Agreement and Plan of Merger. Thus, the information in the letter is generally recognized as confidential and if openly disclosed would permit an unfair commercial to competitors of Delta. Specifically, persons would be able to determine the matters to which Delta would be willing to agree and would know the limits or boundaries of negotiations to acquire the common stock of Delta. In the event the Commission does not approve the transaction, or in the event the transaction otherwise does not close, Delta would suffer harm if this information were made public and therefore accessible to other potential bidders, as it could lessen competition in a subsequent bidding process and allow other purchasers to bid down the price of Delta.

5. **Company Disclosure Schedule for Agreement and Plan of Merger.** The Company Disclosure Schedule attached to the minutes of the February 20, 2017, Board meeting is the subject of Delta’s Motion for Confidential Treatment of Disclosure Schedule filed in this

case on March 16, 2017. The contents of that motion are incorporated in this motion by reference.

6. Much of the foregoing information is treated as confidential by Delta and it is not widely disseminated even among Delta's employees. Only personnel with a business reason to use the confidential information are permitted to view it.

7. If the Commission disagrees with Delta that the foregoing information is exempt from disclosure as confidential commercial information, preliminary memoranda or personal information, however, it must hold an evidentiary hearing to protect the due process rights of Delta and permit it to supply the Commission with a complete record to enable it to reach a decision with regard to this matter.

8. Delta does not object to the disclosure of the foregoing information to the Attorney General pursuant to the confidentiality agreement between Delta and the Attorney General or to any intervenor who can demonstrate a legitimate interest in reviewing the confidential information for the purpose of participating in this proceeding.

9. As permitted by 807 KAR 5:001, Section 13(2)(a)(3)(b), Delta is seeking confidential treatment for the attachments to the minutes in their entirety due to the confidential and proprietary nature of much of the information contained therein. Even though all of the information contained in attachments is not confidential, it is impractical to redact and highlight only the confidential portions as they constitute a large percentage of the information contained in the attachments. In compliance with 807 KAR 5:001, Section 8(3) and 13(2)(e), Delta is filing with the Commission one paper copy of the minutes and non-privileged attachments in their entirety, except insofar as attachments to the minutes do not relate to the contemplated transaction.

10. 807 KAR 5:001, Section 13(2)(a)(2) provides that a motion thereunder shall state the time period in which the material should be treated as confidential and the reasons for this time period. Delta respectfully submits that five years from the date of the filing of the Joint Application is a reasonable period of time for the information to be treated as confidential in light of the competitive conditions in the natural gas industry.

WHEREFORE, Delta Natural Gas Company, Inc. respectfully requests that the Commission grant confidential treatment of the information described herein.

Dated: April 19, 2017

Respectfully submitted,



---

Robert M. Watt III  
robert.Watt@skofirm.com  
Monica H. Braun  
monica.braun@skofirm.com  
Gerald Wuetcher  
gerald.wuetcher@skofirm.com  
Stoll Keenon Ogden PLLC  
300 West Vine Street  
Suite 2100  
Lexington, KY 40507  
Telephone: (859) 231-3000  
Facsimile: (859) 246-3643

Counsel for Delta Natural Gas Company,  
Inc.

## CERTIFICATE OF COMPLIANCE

This is to certify that Delta Natural Gas Company, Inc.'s April 19, 2017, electronic filing of the Motion for Confidential Treatment is a true and accurate copy of the same document being filed in paper medium; the electronic filing has been transmitted to the Commission on April 19, 2017; that an original and six copies in paper medium of the Motion and one unobscured copy of the material for which confidentiality is sought sealed in an opaque envelope, will be hand delivered to the Commission within two business days.

*Marcia H. Braun*

---

Counsel for Delta Natural Gas Company,  
Inc.

005522.156737/4632072.1