

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

In the Matter of:

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

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DELTA NATURAL GAS COMPANY, INC.’s POST-HEARING BRIEF

Comes Delta Natural Gas Company, Inc. (“Delta”), by counsel, for its Post-Hearing Brief in support of approval of the acquisition of Delta by PNG Companies LLC (“PNG”) and Drake Merger Sub Inc. (“Drake”), and indirect control of Delta by SteelRiver Infrastructure Fund North America LP (“SRIFNA”) and SteelRiver LDC Investments LP (“SRLDCI”).

I. Overview of Transaction and Procedural History

On March 16, 2017, Delta, PNG, and Drake (collectively, “Joint Applicants”) filed an application with the Commission under KRS 278.020(6) and (7) seeking approval of the acquisition by PNG of ownership and control of Delta. The acquisition of ownership and control of Delta will result from the merger of Drake, a wholly-owned subsidiary of PNG, with and into Delta, which will be the surviving corporation in the merger and will become a wholly-owned subsidiary of PNG.¹ The Commission accepted the application for filing on March 20, 2017.²

On May 5, 2017, the Joint Applicants requested leave to amend their joint application to include SRIFNA and SRLDCI as additional parties to this proceeding and to request approval for

¹ Joint Application at p. 1.

² March 20, 2017 Letter from Talina Mathews.

SRIFNA and SRLDCI, as the ultimate parent entities of PNG, to acquire indirect control of Delta.³ The Commission granted the motion on May 16, 2017.⁴

The Attorney General moved to intervene on March 16, 2017, which was granted on March 22, 2017. The Joint Applicants responded to four sets of information requests from the Commission and the Attorney General. The Commission conducted an evidentiary hearing on June 8, 2017, in which Glenn Jennings, John Brown, Matthew Wesolosky, Morgan O'Brien, Preston Poljak, and John McGuire testified for the Joint Applicants in support of the proposed acquisition. This brief is filed in accordance with the schedule established by the Commission at the conclusion of the hearing.

II. Pursuant to KRS 278.020(6), PNG Has the Necessary Financial, Technical, and Managerial Abilities to Provide Reasonable Service through Delta after the Proposed Transfer of Ownership and Control

In evaluating the proposed transfer of ownership and control of Delta, the Commission is guided by the statutorily defined requirements in KRS 278.020(6) and (7), which state that:

No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

No 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 ... The commission shall approve any proposed acquisition when it finds that the same is to

³ Motion for Leave to File Amended Joint Application at p. 1.

⁴ May 16, 2017 Order.

be made in accordance with the law, for a proper purpose and is consistent with the public interest.

The record of evidence in the case demonstrates that PNG has the necessary financial, technical, and managerial abilities to provide reasonable service through Delta following consummation of the proposed transaction.

A. PNG Has the Financial Ability to Provide Reasonable Service Following the Proposed Transaction.

PNG has sufficient assets and access to credit facilities to provide reasonable service if the proposed transaction receives approval, as evidenced by PNG's strong financial profile and success as a parent company for other gas utilities, including in Kentucky. PNG's financial soundness is further demonstrated by its ability to finance the proposed transaction.⁵ As consideration for the proposed acquisition, PNG will make a cash payment to Delta's shareholders of thirty and 50/100^{ths} dollars (\$30.50) for each issued and outstanding share of Delta's common stock.⁶ PNG will finance the cash purchase price through a combination of operating cash flow, borrowings under its existing credit facilities and equity contributions.⁷

Delta is the second company PNG has sought to acquire in Kentucky. In 2013, PNG acquired the limited liability company interests of Equitable Gas Company, LLC, which included farm tap customers in Kentucky.⁸ Although the Commission ultimately concluded in Case No. 2013-00163 that the proposed acquisition did not require Commission approval, the Commission

⁵ Direct Testimony of Preston Poljak, generally.

⁶ *Id.* at 5.

⁷ *Id.*

⁸ *Id.* at 7; *In the Matter of: Joint Application of PNG Companies LLC, Peoples Natural Gas Company LLC, EQT Corporation, Distribution Holdco, LLC and Equitable Gas Company, LLC for Approval of Acquisition of Ownership and Control of Equitable Gas Company, LLC* (Case No. 2013-00163) (Ky. PSC Sept. 3, 2013).

nevertheless found that PNG had the financial ability to provide reasonable service to Equitable's customers.⁹ The same conclusion is merited here.

The pre-filed direct testimony of Preston Poljak, as well as the testimony of Morgan O'Brien at the evidentiary hearing, makes clear that PNG has a strong track record in accessing capital from financial markets.¹⁰ PNG is a creditworthy entity with public, investment grade credit ratings by Moody's and Standard & Poor's.¹¹ PNG intends to use its access to capital to continue, and possibly accelerate, the replacement of Delta's older pipes and infrastructure.¹² PNG produced financial records in the course of discovery that further proves it has the ability to provide reasonable service.

The record shows that PNG has the financial ability to provide reasonable service if the acquisition is approved.

B. PNG Has the Technical Ability to Provide Reasonable Service Following the Proposed Transaction.

PNG is an experienced and highly capable natural gas utility operator. PNG was formed in 2009 to acquire from Dominion Resources, Inc. the ownership of PNG's principal subsidiary, Peoples Natural Gas Company LLC, a Pennsylvania limited liability company ("Peoples").¹³ In 2011, Peoples TWP LLC, a Pennsylvania limited liability company (formerly known as T.W. Phillips Gas and Oil Company) ("Peoples TWP") was acquired.¹⁴ Peoples TWP is an affiliate of PNG.¹⁵ Peoples and Peoples TWP currently provide safe and reliable natural gas distribution

⁹ *In the Matter of: Joint Application of PNG Companies LLC, Peoples Natural Gas Company LLC, EQT Corporation, Distribution Holdco, LLC and Equitable Gas Company, LLC for Approval of Acquisition of Ownership and Control of Equitable Gas Company, LLC* (Case No. 2013-00163) (Ky. PSC Sept. 3, 2013).

¹⁰ Poljack Direct Testimony at 7.

¹¹ *Id.*

¹² Direct Testimony of Morgan K. O'Brien at 12-13; June 8, 2017 Hearing Transcript at 10:48:30-10:50:00.

¹³ *Id.* at 1.

¹⁴ *Id.*

¹⁵ *Id.*

services to approximately 690,000 homes and businesses in 18 counties in southwestern Pennsylvania, and are regulated by the Pennsylvania Public Utility Commission.¹⁶

In addition to these utilities, PNG also owns the farm tap assets formerly owned by Equitable in Kentucky, in addition to Equitable's natural gas assets in West Virginia that serves approximately 13,000 customers in 14 counties in northern West Virginia and is regulated by the Public Service Commission of West Virginia.¹⁷ When PNG obtained the Equitable assets in Kentucky, the Commission found that "PNG has demonstrated that it has the...technical abilities necessary to provide reasonable service..."¹⁸ In total, the natural gas system in Pennsylvania, Kentucky, and West Virginia comprises approximately 13,000 miles of natural gas distribution system, 160 miles of high pressure intrastate transmission pipeline and 1,500 miles of gathering pipeline.¹⁹ Thus, PNG is a sophisticated natural gas utility with substantial technical experience.

PNG has indicated its willingness to not only maintain, but enhance, Delta's customer service and satisfaction through the replacement of Delta's customer information system that has exceeded its useful life.²⁰ PNG has deployed SAP enterprise software throughout its other utilities and is adept and experienced in its operation. Because of this, Delta will be able to receive the SAP software at less cost than if Delta purchased it on its own. Implementation of the software will significantly increase the types of self-service customers can effectuate, such as paying bills or scheduling technicians through the internet.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *In the Matter of: Joint Application of PNG Companies LLC, Peoples Natural Gas Company LLC, EQT Corporation, Distribution Holdco, LLC and Equitable Gas Company, LLC for Approval of Acquisition of Ownership and Control of Equitable Gas Company, LLC* (Case No. 2013-00163) (Ky. PSC Sept. 3, 2013).

¹⁹ Direct Testimony of Morgan K. O'Brien at 1.

²⁰ Joint Application at p. 7.

PNG has also implemented a robust, best-in-class safety program that has resulted in increasing safety performance from averaging in the fourth quartile of the American Gas Association companies under prior ownership to now achieving top quartile performance regularly since taking ownership of these businesses.²¹

Based on this experience and the testimony the company has provided in this proceeding, PNG has the necessary technical ability to provide reasonable service to Delta's ratepayers following consummation of the proposed transaction.

C. PNG Has the Managerial Ability to Provide Reasonable Service Following the Proposed Transaction.

Given PNG's experience in operating regulated gas utilities that provide service to approximately 700,000 customers in multiple states, it possesses extensive managerial experience in all areas of distribution and service. Indeed, Morgan O'Brien's prefiled testimony, as well as his testimony at the evidentiary hearing, explained that PNG's sole business and focus is providing gas service.²² When PNG obtained the Equitable assets, the Commission found that "PNG has demonstrated that it has the managerial ... abilities necessary to provide reasonable service..."²³

In addition to PNG's internal expertise, PNG will benefit from the current Delta employees that will be retained for at least a year. In addition, PNG has committed to the appointment of an independent director, approved by Delta's current Board of Directors, to Delta's Board of Directors post-closing.²⁴ Therefore, it is clear that PNG possesses the requisite managerial ability to provide reasonable service following the proposed transaction.

²¹ *Id.* at 9.

²² Direct Testimony of Morgan K. O'Brien at 4-6; June 8, 2017 Hearing Transcript at 11:06:00-11:07:23.

²³ *In the Matter of: Joint Application of PNG Companies LLC, Peoples Natural Gas Company LLC, EQT Corporation, Distribution Holdco, LLC and Equitable Gas Company, LLC for Approval of Acquisition of Ownership and Control of Equitable Gas Company, LLC* (Case No. 2013-00163) (Ky. PSC Sept. 3, 2013).

²⁴ Application at p. 6.

III. Pursuant to KRS 278.020(7), the Proposed Transfer of Ownership and Control Is Being Made in Accordance with Law, Is for a Proper Purpose, and Is Consistent with the Public Interest

KRS 278.020(7) states that the Commission shall approve the change of ownership and control if it finds that the transaction “is to be made in accordance with the law, for a proper purpose and is consistent with the public interest.” As shown below, the proposed transaction satisfies all of these requisites.

A. The Proposed Transfer of Ownership and Control Is Being Made in Accordance with Law.

Delta’s shareholders approved the proposed merger at a shareholder vote held June 1, 2017.²⁵ Over four million shares were voted in favor of the merger, and only a small fraction of shares voted against the transaction or abstained.²⁶ In addition, the proposed transaction has been approved by the Board of Managers of PNG, and by the Board of Directors of Drake.²⁷

The Joint Applicants explained in their Application that the closing of the proposed acquisition is subject to several regulatory conditions, in addition to approval by this Commission. The Hart-Scott-Rodino antitrust review, the only regulatory approval other than the Commission’s approval, has been completed.²⁸ As such, the proposed transaction is being made in accordance with federal and state law.

B. The Proposed Transaction Is for a Proper Purpose.

The proposed transaction will make Delta part of a larger utility system with the resources to enable it to maintain, and likely enhance, the company’s performance and stability. Delta, if acquired by PNG, will continue to meet its commitments to its customers and their communities. PNG has committed, at a minimum, to maintaining Delta’s level of community

²⁵ See Delta’s June 6, 2017 Response to the Attorney General’s Initial Request for Information, Item No. 16.

²⁶ *Id.*

²⁷ Joint Application at p. 10.

²⁸ June 8, 2017 Hearing Transcript at 9:15:00-9:16:00.

involvement, charitable contributions, low income funding, and economic development efforts in Delta's current operating areas.²⁹ The Commission has previously found that these are proper purposes for the transfer of ownership and control of a utility.³⁰

PNG has represented to the Commission that it will operate Delta as an important asset in its system, and of course Delta will remain subject to the Commission's jurisdiction. The proposed transaction is for a proper purpose.

C. The Proposed Transaction Is Consistent with the Public Interest.

The Commission has defined the "public interest" standard pursuant to KRS 278.020(7) to require a showing either that "the proposed transfer will not adversely affect the existing level of utility service or rates or that any potentially adverse effects can be avoided through the commission's imposition of reasonable conditions on the acquiring party."³¹ The Commission has further explained that, although "readily quantifiable benefits" may be "achievable in limited instances," "most transfers of control that are presented to this Commission would be unable to meet this standard."³² Therefore, a proposed transfer for which readily quantifiable benefits can be shown is the exception, not the rule, for meeting (or perhaps exceeding) the public interest standard.

²⁹ Joint Application at p. 6.

³⁰ Case Nos. 2000-095 and 2001-104.

³¹ *In the Matter of: Application for Approval of the Transfer of Control of Kentucky-American Water Co. to RWE Atkiengesellschaft and Thames Water Aqua Holdings GmbH* (Case No. 2002-00018) Order on Rehearing (Ky. PSC, July 10, 2002), at 9, quoting Final Order dated May 30, 2002). See also *In the Matter of: Application of DLR Enterprises, Inc. and Cow Creek Gas, Inc. for Approval of the Transfer of Certain Assets Formerly Owned and Controlled by Sigma Gas Corporation* (Case No. 2007-00419) (Ky. PSC, November 21, 2007), at 6 (stating simply that "The Commission has previously held that a transfer is in the 'public interest' if it does not adversely affect the existing level of utility service or rates or that any potentially adverse effects can be avoided through the Commission's imposition of reasonable conditions on the acquiring party."); *In the Matter of Application of Worldcom, Inc. and MFS Communications Company, Inc., for Approval of Agreement and Plan of Merger and Related Transaction* (Case No. 96-432) (Ky. PSC, Nov. 25, 1996) (approving a change of control and noting only that the manner in which services are provided "will not . . . change" and that the change of control "will not disrupt service or cause inconvenience or confusion to the customers").

³² *In the Matter of: Application for Approval of the Transfer of Control of Kentucky-American Water Co. to RWE Atkiengesellschaft and Thames Water Aqua Holdings GmbH* (Case No. 2002-00018) Order on Rehearing (Ky. PSC, July 10, 2002), at 9-10.

This is just such an exceptional transaction, as the Joint Applicants have identified concrete, readily quantifiable benefits. First, as explained above, PNG will implement SAP software that will not only enable Delta's employees to operate more efficiently, but will provide customers with self-service offerings that were previously unavailable. Because PNG has deployed this software in its other gas utilities, it will be able to implement it at Delta at a lower cost than if Delta simply purchased an SAP system on its own.³³ Second, PNG has repeatedly explained that its access to capital will ensure that Delta can maintain, and perhaps even accelerate, the rate at which aging infrastructure is being replaced under Delta's pipeline replacement program. This demonstrates that the proposed transaction is in the public interest.

IV. Conclusion

The Joint Applicants have shown that PNG's proposed acquisition of Delta satisfies the requirements of KRS 278.020(6) and (7). PNG is a large, stable, experienced company that successfully operates natural gas utilities in multiple states serving approximately 700,000 customers. The record demonstrates that PNG has the financial, technical, and managerial abilities necessary to own and operate Delta, thereby satisfying KRS 278.020(6). In addition, the proposed transaction is legal, is for the purpose of integrating Delta into a larger utility company, and is in the public interest for the reasons set forth herein. For the foregoing reasons, Delta respectfully requests the Commission approve the proposed acquisition by PNG of ownership and control of Delta.

³³ June 8, 2017 Hearing Transcript at 11:30:30-11:31:06.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This is to certify that Delta Natural Gas Company, Inc.'s June 22, 2017, electronic filing is a true and accurate copy of the same documents being filed in paper medium; that the electronic filing has been transmitted to the Commission on June 22, 2017; that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means; and that the original and six copies of this filing in paper medium will be filed by hand-delivery with the Commission within two business days from the date of the electronic filing.

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