

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ATTORNEY GENERAL’S FINAL COMMENTS

Comes now the intervenor, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and hereby tenders his final comments in the above-styled matter.

On March 16, 2017, PNG Companies LLC, Drake Merger Sub Inc., and Delta Natural Gas Company, Inc. [“Delta”] filed their application seeking Commission approval of an acquisition of ownership and control of Delta Natural Gas Company, Inc. On that same date, the Attorney General moved to intervene in this action, which was granted on March 22, 2017. On May 5, 2017 the Applicants moved to amend their application to include two entities which, in the event the Commission approves the application, would become Delta’s ultimate parent companies, SteelRiver Infrastructure Fund North America LP [“SRIFNA”] and SteelRiver LDC Investments LP [“SRLDC”]. The Commission granted that motion on May 16, 2017. Following the June 8, 2017 evidentiary hearing in this matter, PNG Companies LLC, Drake Merger Sub Inc., Delta Natural Gas Company, Inc., SRIFNA and SRLDCV [hereinafter “Joint Applicants”], responded to post-hearing data requests from Commission Staff and the Attorney General.

The Attorney General believes the Joint Applicants have demonstrated that they possess the financial, technical and managerial abilities to provide reasonable service to Delta's ratepayers, pursuant to KRS 278.020(5).

In prior cases involving acquisition or transfers of control, the Commission has set forth various conditions requiring the parties' consent before the Commission issues any final approval.¹ In addition to such other commitments as the Commission may wish to impose in this matter, the Attorney General notes that the Joint Applicants have made various commitments and relevant representations in the record, as set forth below, which may aid the Commission in reaching its decision:

1. PNG Companies, LLC commits to having an independent director on Delta's post-closing board of directors (responses to AG 1-14, AG 1-70);
2. Joint Applicants will not utilize push-down accounting in any manner arising from the transaction contemplated in this case (response to AG 1-70);
3. Delta will file an application and seek Commission approval prior to entering into any services agreement with Peoples Service Company (response to AG 1-2);
4. Delta plans to continue its efforts in working toward economic development and promoting growth in its service areas (responses to AG 1-6 and PSC 1-6);
5. Delta will honor all contractual and regulatory commitments entered into prior to the closing of the transaction (response to AG 1-18);
6. All costs associated with the transaction will be kept out of Delta's rates (response to PSC 2-7 and AG 1-19);
7. Delta will give clear and conspicuous notice to its customers prior to any change in services resulting from the contemplated transaction (response to AG 1-22);
8. Delta ratepayers will not be asked to contribute to costs associated with operating any PNG utility, including People's KY Gas, LLC (response to AG 1-29);

¹ See, e.g., *The Joint Application of Duke Energy Corporation; Cinergy Corp.; Duke Energy Ohio, Inc.; Duke Energy Kentucky, Inc.; Diamond Acquisition Corporation; and Progress Energy, Inc., for Approval of the Indirect Transfer of Control of Duke Energy Kentucky, Inc.*, Case No. 2011-00124, Final Order issued Aug. 2, 2011, appendices A and B.

9. Delta will not be guaranteeing the credit of any affiliates if the transaction is approved (responses to PSC 3-2; AG 1-44 and Video Transcript of Evidence ["VTE"] at 10:24:44);
10. Joint Applicants will not seek recovery for any costs to achieve the transaction, or costs to achieve initial savings associated with the transition of Delta from a publicly traded company to a privately held company (responses to AG 1-45, AG 1-37);
11. Delta will not be required to pledge any of its assets to finance the debt or any purchases of its affiliates (response to AG 1-52);
12. Delta will not be required to grant liens or encumbrances, or otherwise pledge any of their assets to finance any or all of the costs of the transaction (response to AG 1-53);
13. Neither Delta nor its ratepayers, will directly or indirectly incur any additional costs, liabilities, or obligations in conjunction with the proposed transaction in connection with the repayment and refinancing of closing indebtedness (response to AG 1-76);
14. Neither Delta nor its ratepayers, directly or indirectly, will incur any additional costs, liabilities, or obligations in conjunction with the acquisition of Delta by Joint Applicants, SteelRiver LDC Ventures LLC, or SteelRiver Infrastructure Fund NorthAmerica LP (response to PSC 2-7);
15. Delta will not be exposed to any increased insurance premiums in the event the Commission approves the transaction (response to AG 1-79);
16. Delta will not be exposed to any additional contributions to any pension or medical plans, etc. for employees that it otherwise would not have faced but for the approval (response to AG 1-80);
17. Joint Applicants agree to ring-fencing of Delta such that Delta would be insulated from Joint Applicants' non-utility lines of business (response to AG 2-3; AG 3-4; and May 5, 2017 direct testimony of John McGuire, pp. 4-5);
18. Limiting Delta's dividend payable to PNG to a level that maintains a maximum debt-to-capitalization ratio at the utility, excluding working capital borrowing, of 55% (response to AG 2-3);
19. PNG will agree to prohibit Delta from: (a) guaranteeing debt or credit facilities of any PNG affiliate; (b) mortgaging utility assets on behalf of an affiliate; and (c) loaning funds or otherwise extending credit to any affiliate (response to AG 2-3);

20. In the event an employee is terminated without cause prior to the termination of the “no impact period,” any severance paid to such an employee would be considered a transaction cost and would not be recovered through Delta’s rates (response to AG 2-6);
21. Delta will not incur any additional indebtedness or pledge and assets to finance any part of the purchase price paid by PNG for Delta stock (response to PSC 2-7);
22. Delta will seek Commission approval pursuant to KRS 278.300, if Delta issues any securities or evidences of indebtedness with PNG (response to PSC 3-1);
23. PNG will provide the names of all directors of Delta’s post-closing board of directors, together with a short biographical description of each board member (response to AG post-hearing data request no. 3);
24. PNG will commit to maintain a minimum debt-to-capitalization ratio of 40% provided that such commitment will not apply during the period between the exchange of notes with the existing Delta noteholders and the issuance of an intercompany note between PNG and Delta (response to AG post-hearing data request no. 5);
25. If the proposed transaction closes, Joint Applicants will provide copies of post-closing employment agreements with Delta executives Glenn Jennings, John Brown, Johnny Caudill, Brian Ramsey, and Matthew Wesolosky, their respective job titles and duties (response to Commission post-hearing data request no. 1);
26. Joint Applicants will maintain Delta’s corporate office, and its books and records within Delta’s service territory (VTE at 10:22:20);
27. If PNG Companies, LLC and/or any of its affiliates are the sources for any charges to Delta, Joint Applicants agree to allow the Commission to audit the accounting records of those affiliates (VTE at 10:22:55);
28. Joint Applicants agree to not cross-subsidize between their regulated and non-regulated businesses (VTE at 10:23:25);
29. Joint Applicants and their affiliates commit that Delta ratepayers will incur no costs, liabilities or obligations in conjunction with the proposed transaction (VTE at 10:23:33);
30. The accounting and rate-making treatments of Delta’s excess deferred income taxes shall not be affected by the transaction (VTE at 10:23:50);
31. Delta’s customers will experience no adverse change in service if the transaction is approved (VTE at 10:24:20);

32. Joint Applicants will not achieve merger savings at the expense of degrading the adequacy and reliability of Delta's retail gas service (VTE at 10:24:30);
33. Joint Applicants commit that costs pertaining to the lawsuits filed against Delta and others arising from the proposed transaction (including but not limited to attorney fees and any sums paid in settlements) are considered transaction costs and will not be recovered from Delta's ratepayers (VTE at 10:38:18);
34. Joint Applicants commit that only shareholder funds will be used in providing grants or donations for economic development (VTE at 10:36:25);
35. Joint Applicants consider all costs associated with the proposed transaction considered to be transaction costs will not be borne by Delta's ratepayers (VTE at 10:38:54).
36. The proposed transaction will not result in any write-ups, write-offs or restatements of financial results (response to AG -1-65);
37. Delta ratepayers will not be responsible for any termination, and/or other fees or expenses paid should the contemplated transaction not be consummated (response to AG 1-24);
38. No additional stock of any class will be issues as a condition of the transaction's consummation (response to AG 1-27);
39. Any costs associated with Delta's use of the SAP based Customer Information System will be capitalized and accounted in the appropriate FERC account (response to AG 1-21);
40. Any changes to the Delta Pipeline replacement program will be filed with the Commission and approval of any changes contemplated will be sought at that time (response to AG 1-20);

It is noteworthy that Joint Applicants throughout the course of this proceeding, including their own testimony, made many commitments and representations regarding their post-closing processes and governance of Delta. The Attorney General believes that many of these conditions and representations are necessary to protect Delta's customers following the proposed transaction. Therefore, he recommends the Commission consider including these commitments as part of its Final Order in this matter. Doing so will insure that the

commitments Joint Applicants have strived to include in the record are nevertheless memorialized in a final order.

Respectfully submitted,

ANDY BESHEAR
ATTORNEY GENERAL



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Certificate of Service and Filing

Counsel certifies that: (a) the foregoing is a true and accurate copy of the same document being filed in paper medium; (b) pursuant to 807 KAR 5:001 § 8(7)(c), there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and (c) the original and six (6) copies in paper medium are being filed with the Commission within two business days of the date certified below.

this 22nd day of June, 2017



Assistant Attorney General