COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DELTA NATURAL GAS COMPANY, INC. FOR AN ADJUSTMENT OF ITS RATES AND A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY	**)))))**	**CASE NO. 2021-00185**

POST-HEARING BRIEF OF DELTA NATURAL GAS COMPANY, INC.

INTRODUCTION

Delta Natural Gas Company, Inc. ("Delta") requests that the Kentucky Public Service Commission ("Commission") issue an order by January 1, 2022 approving the parties' Stipulation and Recommendation ("Stipulation"), along with the proposed rates, terms, and conditions set forth in the tariffs submitted with same.

On May 28, 2021, Delta filed a base rate application supported by a fully forecasted test period ending December 31, 2022, and a base period ending August 31, 2021. Delta's base rates were last adjusted over a decade ago in Case No. 2010-00116.[1] Delta initially sought a $9,135,170 increase in its revenue requirement. Delta further sought a certificate of public convenience and necessity ("CPCN") for a pipeline to provide redundancy and capacity to Delta's Nicholasville

[1] *Application of Delta Natural Gas Company, Inc. for an Adjustment of Rates*, Case No. 2010-00116, Order (Ky. PSC Oct. 21, 2010).

and Wilmore systems. The Commission determined that the Application met the minimum filing requirements on June 4, 2021.

On June 16, 2021, the Commission issued an order suspending the proposed change in base rates for six months or up to and including January 3, 2022. The Commission granted intervention to one intervenor, the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention ("AG"). Throughout the case, Delta responded to two rounds of discovery from the AG and six rounds of discovery from Commission Staff. On October 18, 2021, the Commission denied Delta's request for deviation from the filing requirements found in 807 KAR 5:001, Section 15(2)(d)(2) with respect to the CPCN.

After extensive settlement negotiations, Delta and the AG entered into and filed a Stipulation. The Stipulation provides a revenue requirement increase of $5,645,767 for service rendered on and after January 1, 2022. The Stipulation represents a unanimous settlement between Delta and the AG and recommends fair, just, and reasonable resolutions of all issues in this case.

On November 16, 2021, the Commission held an evidentiary hearing at the Commission's office and received evidence in the form of testimony from the parties. Delta's six witnesses and the AG's two witnesses were subject to cross-examination.

ARGUMENT

I. Standard of Review

The Commission has exclusive jurisdiction over the regulation of rates and service of utilities.[2] KRS 278.030 provides two basic goals to be achieved by the Commission's regulation of utilities: (1) utilities shall receive fair, just, and reasonable rates; and (2) utilities shall furnish adequate service to their customers.[3] As the applicant in this case, Delta bears the burden of proof

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[2] KRS 278.040.
[3] *See also South Cent. Bell Tel. Co. v. Util. Regulatory Comm'n*, 637 S.W.2d 649 (Ky. 1982).

to show that its proposed rates are fair, just, and reasonable.[4] An applicant in a "future test-period" case may carry its burden by providing the Commission with at least "some assurance that the expense will be incurred."[5] Throughout this proceeding, Delta has provided the Commission and the AG with substantial and extensive information in support of its requested increase in rates.

II. The Stipulation and Recommendation Contains Fair, Just, and Reasonable Rates and Terms.

The Stipulation is the product of extensive negotiations by the parties to this case. The parties worked to mitigate the impact on customers to the extent possible, while still providing the Company an opportunity to recover its costs of providing safe and reliable service. Delta and the AG participated in two settlement meetings and Commission Staff attended the second settlement meeting to gain an understanding of the negotiation process and assist in clarifying issues.

The parties agreed to a revenue requirement increase of $5,645,767 for service rendered on and after January 1, 2022. This reduces Delta's proposed revenue requirement increase from its filed position in its Application of $9,135,170, a decrease of nearly $3.5 million. The Stipulation's revenue requirement represents an overall revenue increase of 11.1%. Delta's original request represented a $12.34 increase in the average residential monthly bill of $59.48. The Stipulation reduces the increase amount to $5.58 on the average monthly residential bill. The residential class is Delta's largest customer class, by a significant margin. As a result of the rates agreed to in the Stipulation, the average customer bill will be $67.09, an increase of 9.1%.[6] Given that Delta has not had a base rate increase in over ten years, the overall increase amounts to

[4] KRS 278.190(3) ("[A]t any hearing involving the rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility . . . ."); *Ky. Am. Water Co. v. Commonwealth*, 847 S.W.2d 737 (Ky. 1993).
[5] *Alternative Rate Filing Adjustment for Delaplain Disposal Co.*, Case No. 2010-00349, Order at 12 (Ky. PSC June 29, 2011).
[6] This calculation includes the GCR rate approved by the Commission on October 22, 2021.

approximately ***fifty cents per year*** for residential customers, which is well below ordinary inflationary pressures. Delta has been able to achieve such a small increase because Delta's operating expenses have remained remarkably flat over the last thirteen years.[7] The Stipulation represents a fair, just, and reasonable resolution of all issues in this case and should be approved in its entirety.

The Stipulation is a result of arm's-length negotiation and represents a significant change from the position Delta originally took in these proceedings. Delta made numerous concessions, including agreeing to reduce the return on equity ("ROE"), reset cash working capital to $0, reclassify 1.76% of debt from long-term to short-term, and change certain revenue allocation and rate design items. As detailed in the Stipulation Testimony of John B. Brown, the largest reduction to the revenue requirement agreed to in the Stipulation is due to the reduction of the ROE from the proposed 10.95% to 9.30%. In the spirit of settlement, the parties agreed for the purposes of this base rate proceeding that a 9.30% ROE is reasonable for Delta's operations. The ROE recommendation in the Stipulation is 165 basis points below that recommended by Delta's expert witness, Paul Moul, and 20 basis points higher than that proposed by the AG's expert witness. Delta agreed to a significant reduction in its proposed ROE.

The Stipulation recommends a 9.3% ROE for both Delta's base rates and its pipe replacement program ("PRP"). A 9.3% ROE for Delta's base rates and PRP is reasonable and should be approved. In the one recently issued gas rate case order in which the Commission applied a lower ROE to a capital replacement rider, the Commission applied a 9.425% ROE to base rates and a 9.35% ROE to the capital replacement rider.[8] Thus, in that case, the ROE for both

[7] As shown in Exhibit JB-1 to Mr. Brown's rebuttal testimony, Delta's 2022 operating expenses presented in this case are actually *lower* than the operating expenses presented for the 2009 test year in Delta's 2010 rate case.
[8] *Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain*

the base rates and rider were higher than the 9.3% ROE the parties have recommended here. Similarly, although stipulations recently entered into by Columbia and Duke in gas rate cases also provide a lower ROE for capital replacement riders, they each provide for a higher ROE for base rates than 9.3%.[9] Thus, although the Stipulation contains the same ROE for base rates and the PRP, customers benefit from a ROE for base rates that is lower than the base rate ROEs recently agreed to by other gas utilities. Notably, the Commission has not applied a lower ROE to a gas company's capital replacement rider in a fully litigated case; in the one case that the Commission approved such a ROE, the parties had stipulated to a lower ROE for the rider.

In addition to the 9.3% ROE being reasonable and in line with recent Commission authority, numerous other reasons favor applying the same ROE to base rates and the PRP. As Mr. Moul detailed in his rebuttal testimony, nearly all of the proxy group companies that he used to measure the cost of equity for Delta already have some form of infrastructure rehabilitation mechanism. Thus, whatever the lessened risk of such a rider is already reflected in a market-determined cost of equity and no further recognition is necessary. A lower ROE for the PRP would also incent Delta to file more frequent rate cases so that PRP assets could be included in base rates and Delta could earn a higher return.

The Stipulation's recommended 9.3% ROE appropriately considers the risk of Delta's operations and is consistent with recently awarded ROEs. Delta recommends the Commission approve the Stipulation's 9.3% ROE and revenue requirement increase of $5,645,767.

Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit, Case No. 2020-00350, Order (Ky. PSC. June 30, 2021). The Commission applied a 9.425% ROE to base rates and a 9.35% ROE to the Gas Line Tracker.

[9] Case No. 2021-00183 and Case No. 2021-00190. In stipulations, Duke agreed to a ROE of 9.375% for natural gas base rates and 9.30% for natural gas capital riders and Columbia agreed to a ROE of 9.35% for natural gas base rates and 9.275% for natural gas capital riders.

III. Delta's Capital Forecast Appropriately Includes Costs Attributable to the Nicholasville Pipeline Project.

Delta requested a CPCN in this proceeding to construct an 8-inch steel transmission pipeline that is approximately 17 miles in length. In doing so, Delta requested a deviation from the filing requirements that require engineering plans and drawings because those documents had not yet been prepared. Delta planned to prepare those documents simultaneously with the acquisition of right-of-way, with both occurring after a CPCN was awarded. When Delta received the Commission's "Deficiency Cured" letter on June 7, 2021, which identified the case as "General Rates" and "Construct," Delta assumed that it met all requirements for its rate and CPCN application. Nevertheless, on October 18, 2021, the Commission denied Delta's deviation request for its CPCN application. If Delta had received notice of the deficiency sooner, it could have provided the requested plans, specifications, and drawings in the record of this proceeding to allow the Commission to consider the CPCN in this case.

Because the proposed pipeline remains critical for both reliability and capacity, the day after receiving the October 18, 2021 Order, Delta invited engineering firms to bid the plans and drawings for the project. On November 2, 2021, Delta awarded the project to EnSite USA. Delta plans to file a CPCN application in a separate proceeding in early 2022, as it has already developed a strong record of evidence regarding the need for the project and expects to begin construction as it originally planned in 2023.

Delta's forecasted test year is calendar year 2022. The forecasted test year includes $1,750,299 of capital costs associated with the Nicholasville Project. Although Delta has not yet received a CPCN for the Nicholasville Project, the costs are appropriate for inclusion in Delta's revenue requirement for a number of reasons. First, a significant portion of the $1,750,299 will be incurred to obtain the CPCN and to comply with other regulatory requirements, such as obligations imposed by the United States Army Corps of Engineers. Given that the Commission has denied Delta's request for a deviation from the engineering plans and drawings, if the Commission removes these costs from the revenue requirement, the Commission is disallowing the recovery of costs that the Commission has mandated that Delta incur in order to obtain a CPCN.

Second, Delta has committed not to acquire right-of-way prior to obtaining a CPCN.[10] This eliminates any concern that acquiring property before a CPCN is granted could violate the requirement in KRS 278.020(1)(a) that a utility shall not "begin the construction" of a project for which a CPCN is required before the certificate is issued. Given that Delta plans to file an application seeking a CPCN in early 2022, there is sufficient time in 2022 to incur the costs related to right-of-way acquisition and labor.

Third, Kentucky law and Commission precedent are clear that utilities may recover forecasted costs in forecasted rate cases. KRS 278.192 allows a utility to use either a historical 12-month test period or a forward-looking 12-month test period to determine the reasonableness of a general rate increase.[11] Delta presented its forecasted budget in this case, which includes the $1,750,299 in 2022 for the Nicholasville Project, in accordance with Kentucky statutes and regulations. Delta bears the burden of proof to show that its proposed rates are just and reasonable.[12] An applicant in a "future test-period" case may carry its burden by providing the

[10] Delta's Response to Commission Staff's Post-Hearing Request for Information, Question Nos. 1 and 4.
[11] Similarly, 807 KAR 5:001 § 10 requires that applications for general adjustment of rates must be supported by either a historical 12-month test period or a forward-looking 12-month test period.
[12] KRS 278.190(3) ("[A]t any hearing involving the rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility . . . ."); *Ky. Am. Water Co. v. Commonwealth*, 847 S.W.2d 737 (Ky. 1993).

Commission with at least "some assurance that the expense will be incurred."[13] The Commission has opined:

> A rate case based on a forecasted test year is not a surrogate for the in-depth analysis required to support a finding of need for the issuance of a Certificate of Public Convenience and Necessity. Rather, a rate case application triggers an investigation of the utility's budgeting procedures to determine their accuracy and reliability. If a utility's budgeting procedures are found to be accurate and reliable, budget projects are properly includable in rate base absent specific facts to justify their exclusion. **The mere lack of a final engineering design does not demonstrate that a budget project is unlikely to be completed as forecasted. Furthermore, the Commission's use of a slippage factor shields ratepayers from being charged for budget projects that may not be completed on schedule**.[14]

Here, Delta has provided significantly ***more*** than "some assurance" that the $1,750,299 will be incurred in 2022. As detailed in Mr. Morphew's rebuttal testimony, Delta has provided bids to support the costs and timeline. Delta has also provided substantial evidence to show that it completes projects in a timely manner. Delta has met its burden of proof that it will spend the amount budgeted for the Nicholasville Project in 2022.

Commission precedent also supports the inclusion of costs in a forecasted test year for a project for which the utility does not yet have a CPCN. In Case No. 2004-00103, the utility presented a forecasted test period rate case with the forecasted test year ending November 2005. The utility presented $2.7 million in budgeted costs in 2004 and 2005 associated with a two-million-gallon elevated storage tank project.[15] The utility later applied for a CPCN for the storage

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[13] *Alternative Rate Filing Adjustment for Delaplain Disposal Co.*, Case No. 2010-00349, Order at 12 (Ky. PSC June 29, 2011).
[14] *Application of Kentucky-American Water Company to Increase its Rates*, Case No. 95-554, Order at 7-8 (Ky. PSC Sept. 11, 1996) (emphasis added).
[15] *Notice of Adjustment of the Rates of Kentucky American Water Company Effective on and After May 30, 2004,* Case No. 2004-00103, Exhibit 11 to Application (Ky. PSC filed Apr. 30, 2004).

tank project on January 21, 2005;[16] the Commission granted the CPCN on April 21, 2005.[17] The Commission issued the final rate case order on February 28, 2005—prior to the utility receiving the CPCN for the project—and did not disturb costs in the forecasted test year for the storage tank. There is no reason to deviate from the Commission's precedent, as Delta has provided significant assurances that the capital costs will be incurred.

Fourth and finally, Delta has committed that if the CPCN is not approved, it will utilize the remaining dollars budgeted for the project in 2022 on other capital projects. Delta has committed to Essential through the 2022 capital budget process that it will spend $17.6 million in 2022. In the event a portion of the budgeted amount for the Nicholasville Project does not get spent through 2022 for any reason, Essential will work with Delta to accelerate planned projects from 2023 into 2022 in order for Delta to achieve the total budgeted amount. As further support, Delta has demonstrated that it meets or exceeds its capital budgets, including in 2021. As Delta provided in its Response to Commission Staff's First Request for Information, Question No. 25, Delta calculated a five-year average slippage factor of 109.482 percent. This shows Delta's accuracy in budgeting and its tendency to, if anything, slightly underestimate capital spend. Moreover, Delta's capital construction was prepared conservatively. As an example, Delta did not project its costs related to 811 would increase, despite the fact that its 811 and line locate costs have increased year-over-year. Delta also did not project across the board contractor increases, despite the fact that contractors may increase their costs. Delta has provided a thorough record of

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[16] *Application of Kentucky-American Water Company for a Certificate of Public Convenience and Necessity Authorizing the Construction of a Two (2) Million Gallon Elevated Storage Tank and 1200 Feet of 24-Inch Water Main*, Case No. 2005-00039, Application (Ky. PSC filed Jan. 21, 2005).

[17] *Application of Kentucky-American Water Company for a Certificate of Public Convenience and Necessity Authorizing the Construction of a Two (2) Million Gallon Elevated Storage Tank and 1200 Feet of 24-Inch Water Main*, Case No. 2005-00039, Order (Ky. PSC Apr. 21, 2005).

evidence that it will incur the costs set forth in the 2022 budget. Indeed, there is no contrary evidence in the record.

Delta respectfully requests that the Commission approve the Stipulation's recommended revenue requirement increase, which includes $1,750,299 for the Nicholasville Project in 2022. Delta has provided substantial evidence to show that it will spend greater than this amount in 2022 on the Nicholasville Project. Delta is confident that it will show that public convenience and necessity require the Nicholasville Project, but until it receives a CPCN, Delta will not acquire any right-of-way. Delta respectfully submits that disallowance of the costs in the forecasted test year for the project would violate Commission precedent and unjustly prevent Delta from recovering its prudently incurred costs.

IV. Delta's Farm Tap Operations Have Been Approved by the Commission.

Farm taps give rural residents where there is no gas distribution system in place the opportunity to hook up and receive natural gas. Although farm tap customers do not have the guarantee of continuous supply, farm taps afford customers the ability to receive natural gas where none would otherwise be available. Unlike water and electricity, the availability of natural gas is limited in many portions of Kentucky, including in areas near Delta's distribution infrastructure. For these customers, farm tap service is preferable to no gas service. The Commission has authorized utilities to provide farm tap service through arrangements that are perhaps outside the limited transactions described by KRS 278.485, which pertains to farm tap service provided by pipeline companies.

Delta's provision of farm tap service is guided by two key principles. First, Delta provides the service as safely as possible. Second, Delta performs the service in accordance with the orders issued by the Commission, as all of Delta's farm tap arrangements have been fully disclosed to and approved by the Commission. Delta is proposing a farm tap rate in this proceeding, but its underlying operations—from procurement, to service, to safety, to the underlying contracts—have not changed. Indeed, the fundamental nature of the operations have remained consistent for decades.

a. Overview of Delta's Farm Tap Operations

Delta has three groups of customers that are served through infrastructure other than Delta's primary distribution network.[18] The first group of customers are served from Delta's transmission lines, high-pressure distribution lines, or gathering lines. Delta does not propose to serve these customers under the farm tap tariff because the character of their service mirrors that of customers receiving service from Delta's distribution lines, including the reliability commensurate with typical distribution service.[19]

i. Vinland Farm Tap Operations

The second group of customers are served from Vinland Energy Operation LLC's lines pursuant to an arrangement with Vinland's predecessors-in-interest that began in 1981. Although Vinland owns the lines, Delta provides farm tap service to the customers through a service line, meter, and regulator. Delta also provides billing and customer service support to the customers. Approximately 290 customers receive farm tap service in this manner.[20] These customers are not connected to a Delta distribution system. Delta proposes to migrate these customers to the farm tap rate it has proposed in this case.

In January 1981, Delta acquired the assets of Peoples Gas Company of Kentucky, a subsidiary of The Wiser Oil Company.[21] The Wiser subsidiary was a natural gas distribution

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[18] Delta's Response to Commission Staff's Fifth Request for Information, Question No. 3.
[19] *Id.*
[20] Delta's Response to Commission Staff's Fifth Request for Information, Question No. 7.
[21] Delta's Response to Commission Staff's Fifth Request for Information, Question No. 1.

company with operations in Corbin, Barbourville, Manchester, Burning Springs, and Oneida, along with farm tap customers along Wiser's natural gas transmission pipelines in southeastern Kentucky.[22] The Commission issued an order approving the transaction on December 19, 1980 in Case No. 8025.[23]

Delta later entered into a contract to provide gas service to a number of Wiser's farm tap customers on a gathering line that Wiser still retained. In 1999, Columbia Natural Resources ("CNR") purchased Wiser.[24] In October 1999, Delta, wishing not to abandon the customers on Wiser's former gathering line, entered into a Contract for Gas Sales and Delivery Service with CNR, providing for the transport of gas along CNR's gathering line.[25] The contract contains a mechanism by which Delta may, but is not obligated to, connect new customers to CNR's gathering line. CNR, however, has the right to refuse any new customer connections on its gathering line. This arrangement is discussed in the Commission's November 28, 2001 Order in Case No. 2000-468.[26] This contract remains in full force and effect today, along with amendments that have been executed.

In Case No. 2000-468, the Commission acknowledged that the Delta customers served from Vinland's lines are not typical "farm tap" customers as defined by KRS 278.485, but are also not distribution retail customers.[27] The Commission ordered Delta to revise its tariff to clarify the classification of service for these farm tap customers, and to attend an informal conference with

[22] *Id.*
[23] *The Application of Delta Natural Gas Company, Inc. for an Order Authorizing the Issuance of 750,000 Shares of Common Stock; Authorizing the Purchase by Delta Natural Gas Company, Inc. of all the Assets of Peoples Gas Company of Kentucky and Certain Transmission Facilities of Wise Oil Company*, Case No. 8025, Order (Ky. PSC Dec. 19, 1980).
[24] Delta's Response to Commission Staff's Fifth Request for Information, Question No. 1.
[25] *Id.*
[26] *Charles B. Gregory v. Columbia Natural Resources and Delta Natural Gas Company, Inc.*, Case No. 2000-468, Order (Ky. PSC Nov. 28, 2001).
[27] *Id.*

Commission Staff to discuss development of a rate for these customers.[28] Delta and Commission Staff subsequently participated in two informal conferences, and the Commission issued an order on February 25, 2002 closing the case because Delta had fully satisfied the Commission's concerns.[29] The Order noted:

> On November 28, 2001, the Commission issued an Order in this case which required… Delta Natural Gas Company, Inc. ("Delta") to file revised tariff sheets that adequately address the rights and conditions of service for its farm tap customers. The Commission also ordered Delta to establish a separate rate by which it would pass on to farm tap customers the higher cost of gas purchased from CNR.
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> Delta and Commission Staff subsequently participated in two informal conferences at which Delta stated that it had no objections to filing tariff sheets addressing the rights and conditions of service for its farm tap customers. To that end, Delta has filed with the Commission revisions that set forth the rights and service expectations of its customers located on CNR's gathering lines.
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> Delta claims that the requirement to establish a separate rate for farm tap customers presents complications that outweigh any benefit that accrues from such requirement. To that end, Delta has requested that the Commission waive the requirement to impose a separate rate for farm tap customers.[30]

The Commission then held: "The Order entered November 28, 2001 in this case is hereby modified to reflect that Delta is no longer required to establish a separate rate for its farm tap customers," and "Delta's tariff filings received by the Commission addressing the rights of Delta's farm tap customers fully satisfy the requirements of the November 28, 2001 Order."[31]

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[28] *Id.*
[29] *Charles B. Gregory v. Columbia Natural Resources and Delta Natural Gas Company, Inc.*, Case No. 2000-468, Order (Ky. PSC Feb. 25, 2002).
[30] *Id.* at 1-2.
[31] *Id.* at 3.

Other than the fact that the lines are now owned by Vinland, the farm tap arrangement approved by the Commission in 2001 has remained unchanged. The natural gas used to serve the Vinland farm tap customers is the gas flowing through Vinland's lines. Delta purchases the gas from Vinland but does not procure gas from any other source for these customers. This basic arrangement has been in place for over two decades. If gas stops flowing on the lines from which the Vinland farm tap customers are connected, Delta cannot provide gas to these customers because the lines are not connected to Delta's distribution network.

ii. <u>Pikeville Farm Tap Operations</u>

The third group of customers are farm tap customers that were formerly served by Peoples Gas KY LLC ("PKY") based in Pikeville, Kentucky. PKY was an affiliate of Delta until April 1, 2021 when Delta acquired it. The Commission approved the acquisition in Case No. 2020-00346.[32] In the Commission's February 22, 2021 Order approving the acquisition, the Commission described the PKY system as a farm tap system and indicated its interest in examining Delta's farm tap rates.[33]

The Commission has thrice-examined the nature of the service provided by PKY and its predecessors-in-interest, and in each instance—after thorough investigation—concluded that the nature of the service is farm tap service:

- Case No. 2013-00163:[34] The Commission did not require approval of the sale of Equitable's assets because it only served customers pursuant to KRS 278.485.

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[32] *Electronic Application of Essential Utilities, Inc., PNG Companies LLC, Peoples Gas KY LLC, and Delta Natural Gas Company, Inc. for (1) A Declaratory Order and (2) Increase in Rates for Peoples Gas KY LLC*, Case No. 2020-00346, Order (Ky. PSC Feb. 22, 2021).
[33] *Id.*
[34] *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, Order (Ky. PSC Sept. 3, 2013)

- Case No. 2018-00263:[35] Held that because Peoples Gas only provides farm tap service; it is not a public utility.
- Case No. 2020-00346:[36] Confirming that Delta was acquiring farm tap customers.

Like the Vinland farm tap operations, Delta does not own the lines from which the Pikeville farm tap customers are served. The lines are presently owned by Diversified Oil and Gas.[37] Delta purchases the gas from Diversified but does not procure gas from any other source to serve these customers. Also like the Vinland system, should the lines from which the customers are served stop flowing gas, Delta is unable to provide service to these customers. Delta proposes to migrate these customers to the farm tap rate it has proposed in this case.

b. Commission Precedent Authorizing Farm Taps Outside of KRS 278.485

Delta has provided farm tap service to customers for decades, which it defines as customers that are served from infrastructure other than Delta's distribution system and for which Delta cannot backfill if there is a loss of supply. This is true for both the Vinland and Pikeville systems, as the gas serving those customers comes from a sole source and no other supply sources are connected to the infrastructure that could backfill the lines should the sole source fail. As described in the preceding section, all of Delta's farm tap arrangements have been disclosed to and approved by the Commission.

The arrangements may appear difficult to reconcile with KRS 278.485, which is a statute that imposes service obligations on pipeline companies, as opposed to utilities, that operate well or gathering lines in Kentucky. Notably, the term "farm tap" is found nowhere in the statute, and

[35] *Georgia Johnson v. Peoples Gas KY, LLC,* Case No. 2018-00263, Order (Ky. PSC Mar. 27, 2020)
[36] *Electronic Application of Essential Utilities, Inc., PNG Companies LLC, Peoples Gas KY LLC, and Delta Natural Gas Company, Inc. For (1) a Declaratory Order and (2) Increase in Rates for Peoples Gas KY LLC*, Case No. 2020-00346, Order (Ky. PSC Feb. 22, 2021)
[37] Delta's Response to Commission Staff's Fifth Request for Information, Question No. 3.

this is precisely where the difficulty in analyzing farm tap arrangements begins. The Commission has described service provided under KRS 278.485 as "farm tap" service since at least 1985.[38] But the Commission has also described a broader class of service, namely when customers are served from lines that are not part of the utility's distribution system, as "farm tap" service since at least 1958.[39] Indeed, the Commission defined the Pikeville system as a farm tap system since 1993, and the Vinland system as such in 1980 and again in 2001.

Delta and its predecessors-in-interest are not the only utilities that have been recognized as providing farm tap service that is perhaps beyond the narrow class of transactions described in KRS 278.485. For example, Kentucky Frontier Gas Company, LLC "operates farm tap facilities owned by other parties and serves farm tap customers attached to those facilities."[40] Specifically, "Kentucky Frontier has consolidated approximately 625 farm tap customers of Belfry Gas, Interstate Gas Company, Kinhag Development, Kinzer Gas Company, Alert Oil and Gas Company, Quality Gas Company, and KLC Enterprises into the operations of Kentucky Frontier. Prior to Kentucky Frontier's acquisition of these farm tap customers, they were served by the owners of the gathering systems that provided natural gas pursuant to KRS 278.485. Although Kentucky Frontier does not own the gathering or pipeline systems from which the customers are served and is not a gas producer, it owns the right to serve the customers and to purchase gas from

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[38] *Residents of Toler Creek, Pike County v. Cities Service Gas Corp*., Case No. 9324, Order (Ky. PSC Oct. 11, 1985).
[39] *An Investigation into Equitable Gas Company's Status as a Provider of Farm Tap Service*, Case No. 92-168, Order, (Ky. PSC Feb. 8, 1993) ("Although conceding that it does not own any gas gathering lines or producing wells, Equitable Gas contends the Commission has authorized it to provide farm-tap service. It notes that, prior to 1958, Kentucky West provided farm-tap service as mandated by KRS 278.485. In Case No. 3563, the Commission authorized Kentucky West 'to transfer its present and future retail domestic customers to Equitable Gas Company.' In granting such authorization, the Commission noted that its action would 'result in Kentucky West Virginia Gas Company's eliminating its retail distribution of natural gas to domestic customers.' Equitable Gas contends that this action implicitly, if not expressly, authorized it to provide the service which it currently provides. The Order, Equitable Gas contends, authorizes it to provide the service which Kentucky West would have been required to provide but for the transfer.").
[40] *Application of Kentucky Frontier Gas Company, LLC for Approval of Adjustment of Farm Tap Rates*, Case No. 2011-00513, Order (Ky. PSC Jan. 17, 2012).

the gathering line or transmission line owner."[41] This is an example of Commission-approved farm tap arrangements that are broader than those described in KRS 278.485 for pipeline companies.

Moreover, other utilities, such as Louisville Gas and Electric Company ("LG&E"), contain tariff provisions that allow for customers to be served from high pressure mains, gas transmission mains, and storage gathering lines. Unlike traditional retail service, the tariff allows LG&E to "determine, in its sole discretion, if service is justified, feasible, and consistent with good operating practice."[42] Columbia Gas of Kentucky, Inc. similarly recognizes service from its transmission and high-pressure pipelines.[43] These are further examples of local distribution companies that have service arrangements beyond those of traditional retail service. Cumulatively, these precedents make clear that the Commission has recognized and approved farm tap arrangements for local distribution utilities beyond those applicable to pipeline companies in KRS 278.485. This is within the Commission's jurisdiction, and the Commission's exercise of this jurisdiction has allowed many customers to receive farm tap service that otherwise have no access to natural gas service.

Delta recognizes that a utility's farm tap service is not static, and that if the nature of the farm tap service fundamentally changes, the utility could be deemed to be providing retail distribution service. As set forth in the preceding sections, the underlying nature of Delta's farm tap arrangements have not changed. While ownership of the sole source of gas may change hands from time to time, the critical features—namely that Delta cannot backfill the gas service if the sole source fails—has remain constant for decades.

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[41] *Id.*
[42] P.S.C. Gas No. 13, Original Sheet No. 98.2.
[43] P.S.C. Ky. No. 5, Original Sheet No. 63.

Commission proceedings in which the nature of the farm tap service has found to have been changed to distribution service, most notably the cases involving Pollitt Enterprises, Inc., bear no resemblance to Delta's operations.[44] In *Pollitt,* an unmarked natural gas line was discovered to be serving 50 customers through distribution lines.[45] The Commission ordered Pollitt, the operator, to apply for a CPCN and a schedule of rates.[46] In contrast, Delta obtained authority when it acquired PKY's assets, and the Commission approved the rate schedule and terms of service for both PKY and Vinland farm tap customers. In *Pollitt*, the underlying contract that rendered the line a gathering line terminated, but Pollitt continued to feed the line with gas to serve the 50 customers. Delta's underlying contracts, however, remain unchanged. Finally, there can be no argument that the lines serving PKY or Vinland customers are Delta distribution lines—Delta does not own the lines and the owner of the lines utilizes the lines solely as gathering or well lines.

Finally, Delta urges the Commission to not depart from its precedent and prior approval of Delta's farm tap operations. From an operational perspective, Delta cannot operate either the PKY or Vinland systems as retail distribution systems because there are no sources of gas that are reasonably near to allow Delta to provide gas service if Diversified or Vinland's lines stop flowing natural gas. For instance, with regard to Diversified, the closest facilities to Delta's system in Bell County is 17.8 miles. As an example for Vinland, the farm tap customers in the Thousandsticks area are served by a Vinland pipeline that is approximately 14 miles from Delta's nearest supply. It would thus be cost prohibitive to serve these customers in the event of the failure of supply. A

[44] Case No. 2017-00120 summarizes the long history of Commission proceedings. *Pollitt Enterprises, Inc., Whitney Clark Pollitt, Individually, Amanda Deeann Pollitt, Individually, and Basil C. Pollitt, Individually, d/b/a The Gas Group, Inc. a/k/a The Gas Group; Alleged Violations of KRS 278.020, KRS 278.160, KRS 278.140, and 807 KAR 5:006, Section 4(2)*, Case No. 2017-00120, Order (Ky. PSC Dec. 27, 2017).
[45] *Id.; see also Pollitt v. Public Service Comm'n*, Case No. 2004-CA-001516-MR, 2005 Ky. App. Unpub. LEXIS 959 (Ky. App. Oct. 15, 2005).
[46] *Id.*

finding that Delta is required to treat these customers as retail customers would force Delta, who has relied on the Commission's orders approving its farm tap operations, to consider abandonment proceedings. Delta respectfully submits that if the Commission's concern is whether customers may lose gas service, imposing retail obligations on Delta that are operationally impossible to satisfy would likely result in all of the farm tap customers losing service, which would be the worst outcome for the affected customers.

CONCLUSION

The Stipulation presents a fair, just, and reasonable of all issues in this case. Delta respectfully requests that the Commission approve the Stipulation in its entirety, including the recommended ROE of 9.3% and the recovery of costs in the forecasted test year associated with the Nicholasville Project. Delta further urges the Commission to approve Delta's farm tap rate, as Delta's provision of farm tap service is provided as safely as possible and is necessary for customers to continue receiving gas service.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

In accordance with the Commission's Order of July 22, 2021 in Case No. 2020-00085 (Electronic Emergency Docket Related to the Novel Coronavirus COVID-19), this is to certify that the electronic filing has been transmitted to the Commission on December 13, 2021; and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means.

Monica H. Braun