

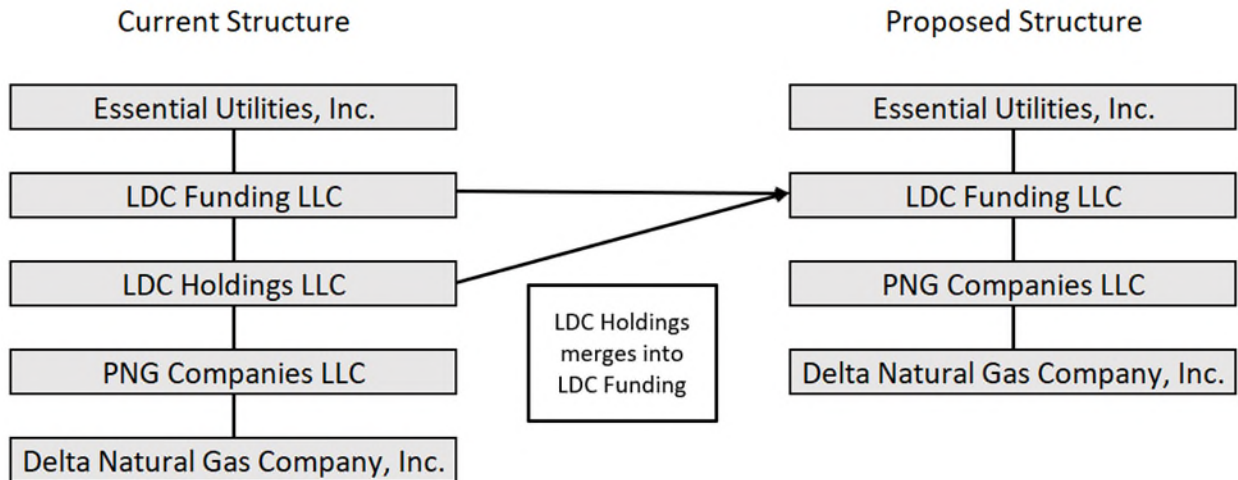
COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

**ELECTRONIC VERIFIED JOINT APPLICATION)
 OF ESSENTIAL UTILITIES, INC., LDC FUNDING)
 LLC, LDC HOLDING LLC, PNG COMPANIES)
 LLC, AND DELTA NATURAL GAS COMPANY,) **CASE NO. 2021-00283**
 INC. FOR APPROVAL OF AN INDIRECT)
 CHANGE OF CONTROL OF DELTA NATURAL)
 GAS COMPANY, INC.)**

VERIFIED JOINT APPLICATION

Pursuant to KRS 278.020(6), Essential Utilities, Inc. (“Essential”), LDC Funding LLC (“LDC Funding”), LDC Holdings LLC (“LDC Holdings”), PNG Companies LLC (“PNG”), and Delta Natural Gas Company, Inc. (“Delta”) (“Joint Applicants”) jointly apply to the Kentucky Public Service Commission (“Commission”) for approval of the indirect acquisition of control of Delta by LDC Funding upon the merger of LDC Holdings into LDC Funding leaving one entity, LDC Funding, as the surviving company. The proposed acquisition of control results from the corporate reorganization illustrated below (the “Proposed Restructuring”):



Under the Proposed Restructuring, Essential will continue to retain ultimate control of Delta, and no change will occur to the corporate structure, operation, management, or personnel of Delta.¹ The Proposed Restructuring also will have no effect on the financial structure of Delta, will not impose any cost or expense on Delta, and will have no effect on Delta's rates or service. Delta management's current access to Essential's management will not be restricted or reduced. In sum, the Proposed Restructuring does not involve any change in the ultimate control of Delta and will have no effect on Delta's continuing ability to provide safe and reliable service at the lowest reasonable cost.

In support of their Application, the Joint Applicants state as follows:

Introduction

1. The full name and mailing address of Delta are Delta Natural Gas Company, Inc., 3617 Lexington Road, Winchester, Kentucky 40391. Delta is a utility engaged in the gas business. Delta purchases, stores, and transports natural gas and distributes and sells natural gas at retail in the following Kentucky counties: Bath, Estill, Montgomery, Menifee, Madison, Powell, Garrard, Jackson, Lee, Bourbon, Jessamine, Rowan, Bell, Knox, Whitley, Laurel, Clay, Leslie, Fayette, Fleming, Clark, Robertson, Mason, Lawrence, Johnson, Martin, Magoffin, Floyd, Pike, Perry, Knott, and Letcher. Delta was incorporated in Kentucky on October 7, 1949, and is in good standing in Kentucky. Delta is a wholly owned subsidiary of PNG pursuant to the Commission's July 13, 2017 Order in Case No. 2017-00125. By order dated March 13, 2019 in Case No. 2018-

¹ *Electronic Joint Application of Aqua America, Inc., SteelRiver Infrastructure Fund North America LP, SteelRiver LDC Investments LP, LDC Parent LLC, LDC Funding LLC, LDC Holdings LLC, PNG Companies, LLC, Peoples Gas KY LLC, and Delta Natural Gas Company, Inc. for an Approval of an Acquisition of Ownership and Control of PNG Companies LLC and Delta Natural Gas Company, Inc., Case No. 2018-00369, Order (Mar. 13, 2019); Electronic Joint Application of PNG Companies LLC, Drake Merger Sub Inc., and Delta Natural Gas Company, Inc. for Approval of an Acquisition of Ownership and Control of Delta Natural Gas Company, Inc., Case No. 2017-00125, Order (July 13, 2017).*

00369, the Commission approved the transfer of indirect ownership of Delta to Aqua America, Inc., now known as Essential.

2. The full name and mailing address of PNG are PNG Companies LLC, 375 North Shore Drive, Suite 600, Pittsburgh, PA 15212. PNG is a Delaware limited liability company organized on September 9, 2008, and is in good standing under the laws of Delaware. It does not transact business in Kentucky and is not authorized to do so. PNG is a wholly owned subsidiary of LDC Holdings.

3. The full name and mailing address of LDC Holdings are LDC Holdings LLC, 375 North Shore Drive, Suite 600, Pittsburgh, PA 15212. LDC Holdings is a Delaware limited liability company organized on June 24, 2008, and is in good standing under the laws of Delaware. It does not transact business in Kentucky and is not authorized to do so. LDC Holdings is a wholly owned subsidiary of LDC Funding.

4. The full name and mailing address of LDC Funding are LDC Funding LLC, 375 North Shore Drive, Suite 600, Pittsburgh, PA 15212. LDC Funding is a Delaware limited liability company organized on September 9, 2008, and is in good standing under the laws of Delaware. It does not transact business in Kentucky and is not authorized to do so. LDC Funding is a wholly owned subsidiary of Essential Utilities.

5. The full name and mailing address of Essential are Essential Utilities, Inc., 762 West Lancaster Avenue, Bryn Mawr, PA 19010. Essential is a corporation that was originally organized under the laws of Pennsylvania under the name Philadelphia Suburban Corporation on November 14, 1968. Philadelphia Suburban Corporation changed its name to Aqua America, Inc., which later changed its name to Essential Utilities, Inc. Essential is in good standing under the laws of Pennsylvania. It does not transact business in Kentucky and is not authorized to do so.

6. The Joint Applicants may be reached by electronic mail at the electronic mail addresses of their counsel set forth below.

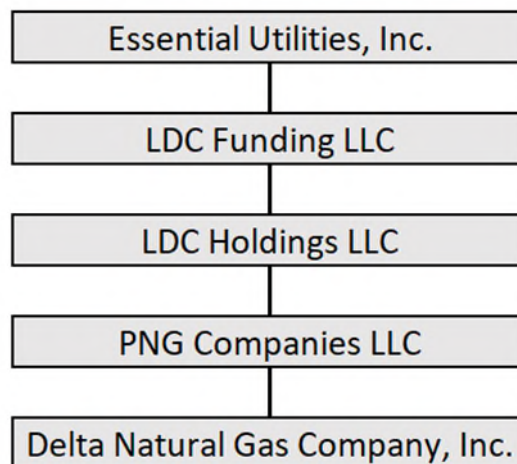
7. On July 2, 2021 the Joint Applicants filed with the Commission a motion to use electronic filing procedures in this proceeding pursuant to 807 KAR 5:001 Section 8. Copies of all orders, pleadings and other communications related to this proceeding should be directed to:

Monica H. Braun
Stoll Keenon Ogden PLLC
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507-1801
monica.braun@skofirm.com

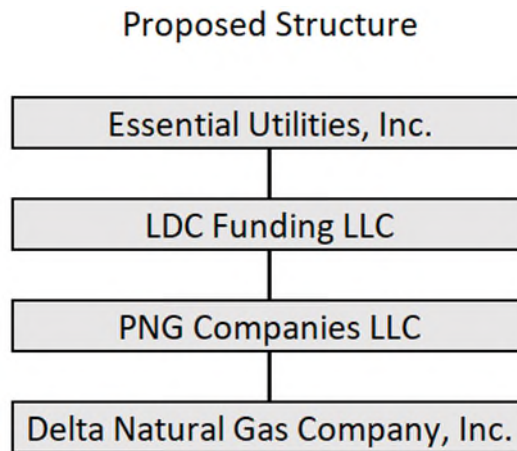
The Proposed Restructuring

8. Under Essential's present corporate structure, LDC Funding is a direct, wholly owned subsidiary of Essential; LDC Holdings is a direct, wholly owned subsidiary of LDC Funding; PNG is a direct, wholly owned subsidiary of LDC Holdings; and Delta is a direct, wholly owned subsidiary of PNG. In addition, Essential has other subsidiaries that are not relevant to this proceeding. Essential's current corporate organization that is relevant to this proceeding is below:

Current Structure



9. The proposed restructuring is straightforward and involves no substantive change in the ultimate control of Delta. Rather, it merely consolidates two existing intermediate holding companies and simplifies the corporate structure of Essential. In turn, this simplification will streamline management and operations within the Essential corporate structure. Delta will remain 100% owned by its direct corporate parent, PNG. PNG will be directly owned 100% by LDC Funding. There will be no changes in the management or operations of Delta. Accordingly, there is no substantive change in control, merely the absorption of a redundant corporate entity. The resulting corporate structure that is relevant to this proceeding is below:



10. The Joint Applicants respectfully request an order approving the Proposed Restructuring by November 1, 2021.

Commission Approval of the Proposed Restructuring

11. KRS 278.020(6) and KRS 278.020(7) address the requirement for Commission approval of a transfer of control of a utility. KRS 278.020(6) states:

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.

KRS 278.020(7) provides in pertinent part:

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. Any acquisition of control without prior authorization shall be void and of no effect.

12. KRS 278.020(8) sets forth three classes of acquisitions that do not require Commission approval under Subsection 7. These include the acquisition of control of a utility “by an acquirer who directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, the utility, including any entity created at the direction of such utility for purposes of corporate reorganization.”² Subsection 8 applies only to Subsection 7 and does not expressly excuse or exclude the requirements of Subsection 6.

13. The Commission has previously recognized that review of a proposed corporate restructuring requires the separate application of Subsections 6 and 7 to the Proposed Restructuring to determine whether prior Commission approval is required and should be granted. This review has frequently resulted in a proposed transaction being found exempt from Subsection 7, but still requiring prior Commission approval under Subsection 6.³

² KRS 278.020(8)(b).

³ See *Joint Application of Kentucky Power Company D/B/A American Electric Power, American Electric Power Company, Inc. and Central and South West Corporation For (1) Approval of The Changes To The System Sales Clause Tariff; (2) Entry of Certain Findings Pursuant To 15 U.S.C. 97z; (3) Entry of Certain Findings Pursuant To 17 C.F.R. 200.53 (4) The Entry of An Order Declaring That The Transfer of The Stock of Kentucky Power Company From American Electric Power Company, Inc. To Its Wholly Owned Subsidiary, Central and South West Corporation May Be Consummated Without Approval By The Commission; or, Alternatively, Approving The Transfer Pursuant To KRS 278.020(4) and KRS 278.020(5); And (5) For Related Relief, Case No. 2002-00039 (Ky. PSC Feb. 27, 2002)*. See also, *Joint Application of MCI Communications Corporation, MCI Financial Management Corporation, MCI Telecommunications Corporation, and Southernnet, Inc. For An Order Approving Restructuring and To Carry Out Certain Transactions In Connection Therewith, Case No. 92-015 (Ky. PSC Feb. 3, 1992); Reorganization of Contel Cellular of Louisville, Inc., Central Kentucky Cellular Telephone Company, Louisville Cellular Telephone Company, Bluegrass Cellular Telephone Company, Contel Cellular of Louisville II, Inc., Contel Cellular of Lexington, Inc., Cumberland Cellular Telephone Company, Inc., Contel Cellular of Kentucky, Inc. and Contel Cellular of Kentucky B, Inc., Case No. 92-463 (Ky. PSC Dec. 14, 1992); Application of Citipower, LLC For Approval of Reorganization*

14. Under the Proposed Restructuring, Essential will retain ultimate control over Delta; the Proposed Restructuring merely eliminates an intermediary for the purpose of a corporate reorganization. Therefore, Subsection 8 exempts the Proposed Restructuring from Commission review under Subsection 7.

15. Although Commission review of the Proposed Restructuring is required under Subsection 6, the scope of the Commission’s review is limited to determining whether the acquiring entities have “the financial, technical, and managerial abilities to provide reasonable utility service.” Here, the indirect acquiring entity—LDC Funding—already has indirect ownership and control of Delta. The Commission recently held that the Joint Applicants, including LDC Funding, have “the financial, technical, and managerial abilities to provide reasonable utility service.”⁴ In addition, none of Delta’s, PNG’s, LDC Funding’s, or Essential’s management or personnel will change as a result of the Proposed Restructuring, and the Proposed Restructuring will have no adverse impact on any of the post-merger Joint Applicants’ financial, technical, and managerial abilities to provide reasonable utility service through Delta.

16. The Joint Applicants therefore ask the Commission to approve the Proposed Restructuring under KRS 278.020(6) and find that the Proposed Restructuring does not require approval under KRS 278.020(7) due to the exceptions set out in KRS 278.020(8). The Joint Applicants submit that such an approval and finding would be consistent with the Commission’s

Proposal, Case No. 2004-00444 (Ky. PSC Apr. 14, 2005); *Joint Application of Magnum Hunter Resources Corporation, NGAS Hunter, LLC, Magnum Hunter Production, Inc. and Sentra Corporation For Approval of Proposed Reorganization*, Case No. 2014-00043 (Ky. PSC May 20, 2014).

⁴ *Electronic Joint Application of Aqua America, Inc., SteelRiver Infrastructure Fund North America LP, SteelRiver LDC Investments LP, LDC Parent LLC, LDC Funding LLC, LDC Holdings LLC, PNG Companies, LLC, Peoples Gas KY LLC, and Delta Natural Gas Company, Inc. for an Approval of an Acquisition of Ownership and Control of PNG Companies LLC and Delta Natural Gas Company, Inc.*, Case No. 2018-00369, Order (Mar. 13, 2019); *Electronic Joint Application of PNG Companies LLC, Drake Merger Sub Inc., and Delta Natural Gas Company, Inc. for Approval of an Acquisition of Ownership and Control of Delta Natural Gas Company, Inc.*, Case No. 2017-00125, Order (July 13, 2017).

final order in Case No. 2017-00415 concerning a corporate restructuring of PPL Corporation's ownership of Kentucky Utilities Company and Louisville Gas and Electric Company.⁵

⁵ *Electronic Joint Application of PPL Corporation, PPL Subsidiary Holdings, LLC, PPL Energy Holdings, LLC, LG&E and KU Energy LLC, Louisville Gas and Electric Company, and Kentucky Utilities Company for Approval of an Indirect Change of Control of Louisville Gas and Electric Company and Kentucky Utilities Company, Case No. 2017-00415, Order (Ky. PSC Apr. 4, 2018).*

WHEREFORE, the Joint Applicants respectfully ask the Kentucky Public Service Commission to enter an order:

1. Declaring that the proposed acquisition of control is a corporate reorganization that, pursuant to KRS 278.020(8), is exempted from the requirements of KRS 278.020(7);
2. Approving, pursuant to KRS 278.020(6), the merger of LDC Holdings LLC into its parent company, LDC Funding LLC, such that LDC Holdings LLC no longer exists subsequent to the merger and that LDC Funding LLC will own 100% of the interests of PNG Companies LLC;
3. Finding that LDC Funding through its indirect ownership and control of Delta has the financial, technical, and managerial abilities to provide reasonable utility service;
4. Approving, pursuant to KRS 278.020(6), the proposed acquisition of indirect control of Delta by LDC Funding by November 1, 2021; and
5. Granting all other relief to which the Joint Applicants may be entitled.

Dated: July 7, 2021

Respectfully submitted,

/s/Monica H. Braun

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Counsel for Joint Applicants

CERTIFICATE OF COMPLIANCE

In accordance with 807 KAR 5:001 Section 8(7), this is to certify that the Joint Applicants' July 7, 2021 electronic filing is a true and accurate copy of the documents being filed in paper medium; that the electronic filing has been transmitted to the Commission on July 7, 2021; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that a true and correct copy in paper medium will be delivered to the Commission within 30 days of the lifting of the State of Emergency.

/s/Monica H. Braun

Counsel for the Joint Applicants

VERIFICATION

COMMONWEALTH OF KENTUCKY)

) SS:

COUNTY OF CLARK)

The undersigned, **John B. Brown**, being duly sworn, deposes and says that he is President of Delta Natural Gas Company, Inc., that he has personal knowledge of the contents of this Application and that to the best of his information, knowledge and belief they are correct.



John B. Brown

Subscribed and sworn before me, a public notary in the said County and State on

July 6, 2021.



Public Notary

My Commission Expires: 10/2/2024

