

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY FRONTIER GAS)
COMPANY, LLC FOR APPROVAL OF TRANSFER)
OF STOCK OF COW CREEK)
GAS, INC., DEMA GAS COMPANY, INC.,) CASE NO. 2010-00076
PURCHASE OF FARM TAP AND ROYALTY GAS)
CUSTOMERS OF INTERSTATE NATURAL GAS)
COMPANY AND TRANSFER OF A PORTION OF)
DLR ENTERPRISES, INC. PIPELINE TO COW)
CREEK GAS, INC.)

ORDER

Kentucky Frontier Gas Company, LLC ("Kentucky Frontier") has applied for authorization to acquire control of Cow Creek Gas, Inc. ("Cow Creek") and Dema Gas Company, Inc. ("Dema") and to purchase the farm tap and royalty gas customers of Interstate Natural Gas Company. Having reviewed the evidence of record and being otherwise sufficiently advised,¹ the Commission finds that:

1. Cow Creek is a Kentucky corporation that owns and operates a natural gas distribution system that serves approximately 547 customers in Magoffin and Floyd Counties, Kentucky.
2. Dema is a Kentucky corporation that owns and operates a natural gas distribution system that serves approximately 10 customers in Knott County, Kentucky.

¹ On February 22, 2010, Kentucky Frontier submitted its application. On March 26, 2010, Commission Staff issued a data request to Kentucky Frontier. Kentucky Frontier has responded to this request. An informal conference was held in this matter on March 30, 2010. No persons sought intervention in this matter. Kentucky Frontier has not sought a hearing on its application.

3. Jerome A Kanney and Dennis L. Rohrer jointly own all of the capital stock of Cow Creek and Dema.

4. DLR Enterprises, Inc. ("DLR") is a Kentucky corporation whose capital stock is owned solely by Mr. Kanney and Mr. Rohrer, however, it is not a utility pursuant to KRS 278.010.

5. Interstate Natural Gas Company ("Interstate Gas"), a general partnership organized under the laws of Kentucky, operates as a gas pipeline company and obtains gas from producing wells located in Kentucky and furnishes gas service to persons on whose property its producing wells or pipelines are located. Mr. Kanney and Mr. Rohrer are Interstate Gas's sole partners.²

6. Kentucky Frontier, a Colorado limited liability company authorized to do business in Kentucky, owns and operates facilities that are used to distribute natural gas to customers in Floyd and Pike counties, Kentucky.

7. The Commission has previously approved Kentucky Frontier's acquisition of control of natural gas utilities operating in Kentucky.³

8. Industrial Gas Services, Inc. ("IGS"), a Colorado corporation, and Kentucky Frontier have common ownership.

² See <http://apps.sos.ky.gov/business/obdb/%28S%28teazgu45br3b4rvp1n32d45%29%29/showentity.aspx?id=0565217&ct=07&cs=99999> (last visited May 7, 2010).

³ Case No 2008-00394, *Application of Kentucky Frontier Gas, LLC for Approval of Financing and Transfer of Control* (Ky. PSC Nov. 25, 2008); Case No. 2009-00492, *Application of Kentucky Frontier Gas Company, LLC for Approval of Transfer of People's Gas Company Assets* (Ky. PSC Jan. 29, 2010); Case No. 2009-00442, *Application of Kentucky Frontier Gas Company, LLC for Approval of Transfer of Auxier Road Corporation Stock* (Ky. PSC Feb. 22, 2010).

9. Kentucky Frontier has entered into a series of agreements, which are described in Finding Paragraphs 10 through 14, to acquire, *inter alia*, control of the stock of Cow Creek and Dema.

10. Kentucky Frontier has entered into an agreement with Mr. Kanney and Mr. Rohrer for the acquisition of all shares of Cow Creek for \$320,000. This agreement is contingent upon the completion of the sale of all related transactions involving Dema, DLR and Interstate Gas.

11. Kentucky Frontier has entered into an agreement with Mr. Kanney and Mr. Rohrer for the acquisition of all shares of Dema stock for no stated consideration, but contingent upon the completion and execution of all related transactions involving Cow Creek, DLR and Interstate Gas.

12. Kentucky Frontier has entered into an agreement with Interstate Gas to obtain the right and responsibility to serve all current Interstate Gas farm tap and royalty customers in Floyd, Pike, Magoffin, Perry, Leslie, Breathitt, Lawrence, Martin, Knott and Johnson counties, Kentucky and any additional customers that connect to Interstate Gas's pipelines in those counties for the following ten years. The agreement further provides for transfer of ownership of all farm tap installation and related appurtenances.

13. Kentucky Frontier and Cow Creek have entered into an agreement with DLR to purchase approximately 32.6 miles of DLR pipeline facilities for \$230,000. This purchase will occur concurrent with other transactions described in Findings Paragraphs 10 through 14, and does not require our approval.

14. IGS has entered into an agreement with Mr. Kanney and Mr. Rohrer for the acquisition of all shares of DLR for an amount not to exceed \$250,000. This agreement does not require Commission approval.

15. Kentucky Frontier will finance the proposed transactions with the proceeds of a loan of \$1,746,400 from Community Trust Bank. Approximately \$550,000 of these proceeds will be used for the proposed transaction.⁴

16. Kentucky Frontier does not propose any immediate changes to the rates, regulations, or conditions of the utilities. Kentucky Frontier anticipates that their current rates will remain in effect until consolidated with the other gas utilities under its ownership and control. It has stated its intention to establish a single Gas Cost Recovery methodology for all of the gas utilities under its ownership and control at a later date.

17. Kentucky Frontier's management has extensive experience in the operation and management of gas pipeline and distribution systems.

18. The proposed debt financing for the purchase of Cow Creek and Dema stock and DLR pipeline assets is for lawful objects within the corporate purposes of Kentucky Frontier, is necessary and appropriate for and consistent with the proper performance by the utility of its service to the public and will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purposes.

⁴ See Case No. 2009-00442, *Application of Kentucky Frontier Gas Company, LLC for Approval of Transfer of Auxier Road Corporation Stock* (Ky. PSC Feb. 22, 2010) at 6. The Commission required Kentucky Frontier to seek Commission approval prior to the use of these proceeds.

19. Kentucky Frontier is purchasing Cow Creek's stock at a purchase price in excess of the stock's book value. Since this is a "stock" purchase and not an "asset" purchase, Kentucky Frontier should record its investment in Cow Creek in Account 123.1, Investments in Subsidiary Companies.

20. Should Kentucky Frontier wish to recover through rates any of the purchase price of Cow Creek stock in excess of the book value of the stock, it should request Commission authorization for such recovery. The Commission will treat such a request in a manner similar to that of a gas plant acquisition adjustment ("GPAA").⁵

21. The record is unclear whether, as a result of the transactions described above, Kentucky Frontier will be acquiring assets at a price greater than the original cost less accumulated depreciation (net book value). When the sale of a utility's assets results in a purchase price greater than the original cost less accumulated depreciation (net book value), the difference between the purchase price and the net book value is accounted for as a GPAA. Kentucky Frontier should also consider whether, based on the book value of the assets acquired from DLR, any GPAA arises from that transaction.

Based upon the above findings of fact, the Commission makes the following conclusions of law:

1. Cow Creek, Dema, and Kentucky Frontier are utilities subject to Commission jurisdiction.⁶

2. Kentucky Frontier, Cow Creek and Dema are "persons" for purposes of KRS Chapter 278.⁷

⁵ *Id.* at 3 – 5.

⁶ KRS 278.040.

3. KRS 278.020(5) provides that “[n]o person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission . . . without prior approval by the commission.” As Kentucky Frontier is a person and proposes to acquire ownership of Cow Creek and Dema, this statute is applicable to and requires Commission approval of the proposed transfer.

4. KRS 278.020(6) provides that “[n]o 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.”

5. KRS 278.300 provides that no utility shall issue or incur an evidence of indebtedness until it has been authorized to do so by the Commission.

6. Kentucky Frontier has the financial, technical, and managerial abilities to provide reasonable service to the present customers of Cow Creek and Dema.

7. The proposed acquisition of control is in accordance with law, for a proper purpose, and consistent with the public interest.

8. Kentucky Frontier’s proposed use of the \$550,000 of the proceeds from the previously authorized \$1,746,400 loan from Community Trust Bank should be approved.

9. As Interstate Natural Gas is not a utility subject to Commission jurisdiction, neither KRS 278.020(5) nor KRS 278.020(6) require Commission approval of the

⁷ KRS 278.010(2).

proposed transfer of farm tap and royalty customers from Interstate Natural Gas to Kentucky Frontier.

IT IS THEREFORE ORDERED that:

1. Kentucky Frontier's proposed acquisition of control of Cow Creek and Dema is approved.

2. Commission authorization of the proposed acquisition of control is effective for one year from the date of this Order and shall lapse if not completed within this time period.

3. Within 20 days of completion of the transfer of control as approved, Kentucky Frontier shall notify the Commission in writing of the completion thereof.

4. Within 20 days of the completion of the approved acquisition, Kentucky Frontier shall file a signed and dated adoption notice in accordance with 807 KAR 5:011, Section 11.

5. Within 10 days of the filing of such adoption notice, Kentucky Frontier shall issue and file with the Commission in its own name the utility's tariff, or such other tariff as it proposes to put into effect in lieu thereof, in the form prescribed in 807 KAR 5:011, Section 11.

6. Within 20 days of the completion of the proposed transfer, Kentucky Frontier shall file the journal entries it proposes to record the approved acquisition. The acquisition shall be recorded in accordance with the Uniform System of Accounts.

7. The acquisition stock premium adjustment is approved for accounting purposes only. Nothing in this Order shall be construed as authorizing rate-making

treatment of any stock premium plant acquisition adjustment or the recovery of any cost or expense associated with the proposed acquisition of control in Kentucky Frontier's general rates. These issues are deferred until Kentucky Frontier's next rate case proceeding.

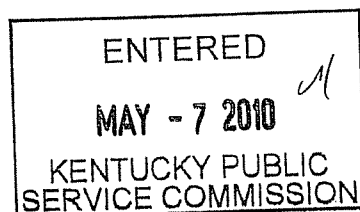
8. Kentucky Frontier is authorized to use the remaining \$550,000 of the commercial bank loan from Community Trust Bank to finance the acquisition and for no other purpose.

9. Any change of rates proposed by Kentucky Frontier for Interstate Gas farm tap customers shall be accomplished pursuant to the statutes and regulations governing farm tap service.

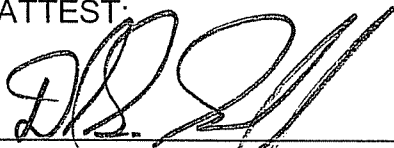
10. Within 20 days after completion of the proposed tariff, Kentucky Frontier shall file a tariff sheet setting forth the rates and conditions of service that it will apply to farm tap customers acquired from Interstate Natural Gas.

Nothing contained herein shall be deemed a warranty or finding of value of securities or financing authorized herein on the part of the Commonwealth of Kentucky or any agency thereof.

By the Commission



ATTEST:



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