

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:)
)
THE JOINT APPLICATION OF GAS NATURAL)
INC. AND KENTUCKY ENERGY)
DEVELOPMENT, LLC FOR AN ORDER)
APPROVING A TRANSFER AND ACQUISITION)
OF OWNERSHIP AND CONTROL OF PUBLIC)
GAS COMPANY, INC.)

Case No. 2012- 00029

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JAN 24 2012

PUBLIC SERVICE
COMMISSION

PETITION FOR CONFIDENTIAL TREATMENT
PURSUANT TO KRS 61.878 et seq. and 807 KAR 5:001(7)

Joint Applicants hereby petition this honorable Commission to grant confidential treatment for the pricing terms set forth in the Stock Purchase Agreement, Joint Applicants Exhibit 2, for the proposed sale and purchase of the capital stock of Public Gas Company for which approval is being requested in this proceeding. The specific grounds on which the Commission should determine that the documents sought to maintained as confidential should not be subject to disclosure under the Kentucky Open Records Act, KRS 61.780 *et seq.* are as follows:

1. On November 11, 2011 Joint Applicants executed a "Stock Purchase Agreement" (Joint Application Exhibit 2 attached to the Joint Application).
2. Section 4(a) of the Stock Purchase Agreement ("Purchase Price") includes the specific purchase price for the Stock of Public Gas Company by Gas Natural Inc. It also specifies at Subsection 4(c) a customer price adjustment amount should the actual number of retail natural gas customers of Public Gas Company be less than a specified number of customers or more than a specified number of customers on the Closing Date. At Subsection 4(e) it specifies a receivable holdback purchase price adjustment which establishes a percentage of outstanding receivables to be

paid by Gas Natural Inc. to Kentucky Energy Development, LLC that are collected during a period (the “Extended Collection Period”) after the expiration of the “Receivable Holdback Period”.

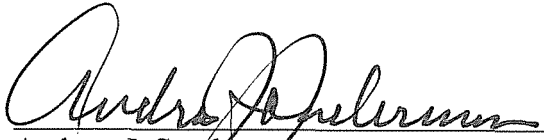
3. Exhibit D annexed to the Stock Purchase Agreement provides a specific example of account reconciliation based on the specific time periods and percentage established in Subsection 4(e), which includes the agreed purchase price.
4. The Answer commencing on line 8, page 8 of Joint Application Exhibit 4, the Direct Testimony of Thomas J. Smith, contains the same pricing information set forth in Section 4 of Joint Application Exhibit 2, the Stock Purchase Agreement.
5. KRS 61.878(c)(1) provides that the following public records be excluded from the disclosure requirements of the KRS 61.87- to 61.884: “Upon and after July 15, 1992, records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.”
6. Gas Natural Inc. has stated in the direct testimony of Thomas J. Smith submitted in support of the Joint Application (Joint Application Exhibit 4, p. 4) in this docket that it is Gas Natural’s business strategy to manage its existing utility subsidiaries efficiently to generate maximum reasonable returns and to acquire natural gas utilities that provide the opportunity for customer expansion and earnings growth. Gas Natural submits that its efforts to pursue additional acquisitions in Kentucky will be impaired to the extent that competitors can identify its valuation and pricing strategy for such prospective acquisitions. It is further submitted that this clearly fits within the exception to the Open Records

Act set forth in the preceding paragraph, and is the very type of material, non-public information that this exception is intended to prevent from falling into the hands of a competitor.

7. Pursuant to 807 KAR 5:001 Section 7(2)(a), attached to this Petition is one copy of those pages of Joint Application Exhibit 2 and Joint Application Exhibit 4 for which confidential treatment is sought, with the material to be redacted from the publicly available version of Joint Application Exhibits 2 and 4 highlighted in yellow transparent ink. In compliance with 807 KAR 5:001 Section 7(b), Ten copies of the redacted publicly available version of Joint Applicants Exhibits 2 and 4 have been filed with the Joint Application contemporaneously with the filing of this Petition. A redacted courtesy copy of Joint Applicants Exhibits 2 and 4 have been served on Mr. Dennis G. Howard II, Office of the Kentucky Attorney General.

WHEREFORE, good cause having been shown therefore, Joint Applicants Gas Natural Inc. and Kentucky Energy Development, LLC respectfully request that the Commission grant confidential treatment to those portions of Joint Applicants Exhibits 2 and 4 which state the pricing terms of the proposed stock sale and purchase for which the Commission's approval has been sought in this proceeding.

Respectfully submitted,



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one (1,581) customers located in the State of Kentucky counties of Breathitt, Jackson, Johnson, Lawrence, Lee, Magoffin, Morgan, and Wolf including, but not limited to (i) the company name; (ii) all pipelines, meters, inventory including gas, work in progress, rights of way, licenses, easements, pipeline interconnections, office equipment, leases, fixtures, machinery, equipment, pipe and vehicles (collectively the "Personal Property"); and (iii) all of Company's contracts and agreements with its suppliers, contractors, and customers (the "Contracts")

(b) Employees. Employment of all full time and part-time employees as of the Closing Date. Full time employees as of the Effective Date are Ray Jenkins and Stasia Kruse, and the part time employee is Tina Hart.

(c) Supporting Documents. All of Seller's files and records pertaining to the Assets, including, but not limited to Seller's land files, land maps, gas contract files, federal or state regulatory files, engineering studies and reports, and copies of all accounting records and so far as they are applicable to the Assets (the "Records").

4. PURCHASE PRICE

(a) Price: Payment. Upon the terms and subject to the conditions hereinafter set forth, in consideration of the delivery by Seller of the Purchased Shares, Purchaser shall pay to Seller at the Closing an amount equal to [REDACTED] subject to adjustments pursuant to the terms of this Agreement (the "Purchase Price"). The Purchase Price shall be paid by Purchaser as follows: (i) an amount equal to the Company's account payable to Jefferson Gas at Closing, approximately [REDACTED] as of the Effective Date (the "Jefferson Receivable"), paid in immediately available funds directly to Seller's Affiliate Jefferson Gas at Closing; (ii) the remainder of the Purchase Price in immediately available funds at Closing, including reconciliation for accounts payable and accounts receivable ("reconciliation") pursuant to Section 4(d) herein, less an amount equal to twenty percent (20%) of the Company's total receivables due at Closing (the "Receivable Holdback") which shall be paid pursuant to Section 4(e) herein and subject to the reconciliation detailed in Section 4(d).

(b) On the Closing Date, Seller shall surrender and deliver all certificates representing the Purchased Shares or, if applicable, replacement certificates together with lost certificate affidavits and indemnifications (in form and substance reasonably acceptable to Purchaser), duly endorsed for transfer or accompanied with executed blank stock powers (in form and substance reasonably acceptable to Purchaser), together with a new certificate representing such shares issued in the name of Purchaser.

(c) Customer Price Adjustment. At Closing, if Company has less than [REDACTED] customers, the Purchase Price shall be reduced [REDACTED] for each customer under that amount or if the Company has more than [REDACTED] customers, the Purchase Price shall be increased [REDACTED] for each customer over that amount. "Customer" shall mean any individual or entity having received at least one monthly bill from Company for gas delivered during the ninety (90) day period prior to the Closing Date. By way of example only, if at Closing Company has [REDACTED] customers then the Purchase Price shall be reduced by [REDACTED].

(d) Accounts Reconciliation Purchase Price Adjustment. On the Closing Date, Seller shall reconcile its accounts receivable and its accounts payable and the Purchase Price shall be adjusted upward or downward, dollar for dollar, as the case may be, up for a positive net amount and down for a negative net amount, less the Receivable Holdback outlined in Section 4(e). As an example only, Exhibit "D" sets forth how the account reconciliation shall operate pursuant to this Section 4(d).

(e) Receivable Holdback Purchase Price Adjustment. The Receivable Holdback shall be held by Purchaser for a period of forty-five (45) days after Closing (the "Receivable Holdback Period"). During the Receivable Holdback Period, the Company shall use all commercially reasonable efforts to collect all of its outstanding accounts receivable from its customers in the ordinary course of business. At the end of the Receivable Holdback Period any and all receivables that were due, but not yet paid, at Closing, that were not collected during the Holdback Period and any liabilities paid by the Company during the Holdback Period that accrued prior to Closing, excluding the Jefferson Receivable, shall be deducted from the Receivable Holdback. The remainder of the Receivable Holdback shall be paid to Seller within three (3) business days. For a period of one hundred and thirty-five days (135) days after termination of the Receivable Holdback Period (the "Extended Collection Period"), Purchaser shall attempt to collect any outstanding receivables that were due, but not paid, at Closing in the ordinary course of business. Purchaser shall pay Seller [REDACTED] percent [REDACTED] of any outstanding receivables that were due, but not paid, at Closing collected during the Extended Collection Period at the termination of the Extended Collection Period. As an example only, Exhibit "D" sets forth how the Receivable Holdback Adjustment shall operate pursuant to this Section 4(e).

5. ASSUMPTIONS OF OBLIGATIONS AND RISKS

Except as otherwise set forth herein, as of the Closing Date, Purchaser shall assume and be solely responsible for only the following liabilities and obligations of the Company (hereinafter collectively referred to as the "Assumed Liabilities"):

(a) the payment, performance, observance and fulfillment from and after the Closing Date of all duties, liabilities (provided that the events and/or circumstances giving rise to the liabilities occurred from and after the Closing Date) and obligations of Seller under the Leases and all permits relating to the ownership and operation of the Assets;

(b) all risk of loss or damage with respect to the Assets from and after the Closing Date;

(c) any Damages resulting from any claim, lawsuit or otherwise relating to the Assets, provided that the events and/or circumstances giving rise to the Damages occurred from and after the Closing Date;

(d) all other actions or omissions or any matter otherwise related to the Assets from and after the Closing Date; and

(e) Seller's obligations and liabilities from and after the Closing Date under the Contracts.

EXHIBIT "D"

Example of Account Reconciliation

Public Gas Company, Inc.

Allocation of Purchase Price - Illustration

Proforma based on 12/31/10 Balance Sheet - Tax Basis

Gross Sale Price

Payable at Closing:

Payables to Jefferson (Gas purchases & labor)

Payment to KED for stock purchase

("Gross Sale Price" + "Net Accounts Receivable" - "Holdback" - "Payables to Jefferson")

Total Payable at Closing

(1)

Total

Payments to

KED

Jefferson

\$

\$

\$

\$

\$

\$

Payable 45 Days after Close (during Receivable Holdback Period):

Holdback (20% x [redacted])

Less: Outstanding accounts receivable [redacted]

Holdback net of uncollectible accounts at 45 days after close

Total Payable 45 Days after Close

\$

25,000.00

25,000.00

25,000.00

25,000.00

Payable 180 Days after Close (during Extended Collection Period):

Accounts receivable collected [redacted] collected after 45 days post close, split [redacted]

2,000.00

\$

\$

\$

Accounts Receivable - Not collected during Extended Collection Period

(This amount is forfeited by KED/Jefferson in addition to [redacted] of the amount collected after 45 days post close)

\$

Net Accounts Receivable - "Reconciliation"

Accounts receivable	(2)	\$ [REDACTED]
Accounts payable	(3)	(2,103.15)
Accrued expenses	(4)	(21,220.91)
Customer deposits on hand	(5)	(87,795.24)
		<u>[REDACTED]</u>

Net Accounts Receivable - "Reconciliation" \$ [REDACTED]

* Note: The above example assumes that [REDACTED] of accounts receivable is collected between 0 - 45 days after close, [REDACTED] between 46 - 180 days, and [REDACTED] collected afterwards indicating that [REDACTED] is uncollectible or collected after 180 days post close. The payables netted against receivables remains unchanged.

Public Gas Company, Inc.
 Balance Sheet - Tax Basis
 December 31, 2010

Assets		
Cash		\$ 10,554.21
Accounts receivable	(2)	139,561.44
Supplies		<u>9,248.71</u>
		159,364.36
Machinery & Equipment		
Structure		1,027.00
Pipeline		2,502,097.20
Office equipment		6,317.60
Vehicles		14,190.00
Service equipment		50,299.23
Accumulated depreciation		<u>(2,220,436.00)</u>
		353,495.03
		<u>\$ 512,859.39</u>
Liabilities		

1 personnel at the day-to-day operational level, have been successfully serving retail
2 consumers pursuant to approved tariffs, and in compliance with rules and regulations
3 of the utility regulatory agencies exercising jurisdiction over them for many years.
4 We bring that breadth of experience and operational know-how to our proposed
5 operation of Public Gas Company.

6 Q. Please describe the proposed transfer of the capital stock between the Joint
7 Applicants.

8 A. The purchase price of the stock is \$_____, subject to adjustment if as of the
9 closing date Public Gas has fewer than _____ customers as of the closing date. For
10 each customer below that floor, the purchase price will be adjusted by \$_____. If
11 Public Gas has more than _____ customers on the closing date, the purchase price
12 will be adjusted by the same amount for each additional customer. The purchase
13 price will be paid at closing (a) to cover the account payable to Jefferson Gas, LLC as
14 of November 11, 2011 and paid directly to Jefferson Gas, and (b) the remainder is
15 payable in immediately available funds to Kentucky Energy Development subject to a
16 receivable holdback to be reconciled subsequent to closing. See Joint Application
17 Exhibit 2, Section 4.

18 Q. Does this complete your prepared direct testimony in support of the Joint Application?

19 A. Yes, it does.

20