

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

This matter arises upon the motion of the Kentucky Laborers District Council and affiliated local unions in Kentucky (“KLDC”) filed April 3, 2017, for full intervention. As a basis for its motion to intervene, KLDC states that it represents five local unions in Kentucky and is bargaining agent for over 3,600 employees, one-third of whom are in pipeline and power plant work. KLDC asserts that its experience representing workers in pipeline and power plant industries, along with its experience in workforce development and worker safety, makes it uniquely positioned to assist the Commission in determining whether the proposed acquisition of Delta Natural Gas Company, Inc. (“Delta”) by PNG Companies, LLC (“PNG”) and Drake Merger Sub Inc. (“Drake”) will achieve the stated goal of providing reasonable service to and benefits for Delta’s customers.

On April 10, 2017, Delta filed its objection and response to KLDC’s motion to intervene, which Delta requested that the Commission deny. As a basis for its objection, Delta argues that KLDC failed to establish any interest in Delta’s rates or service, because Delta does not have any union employees, and therefore none of KLDC’s members work for Delta and none of KLDC’s members will be directly affected by the proposed change of control of Delta. Delta further argued that KLDC’s alleged experience with workforce

development and worker safety is not a sufficient basis to justify the Commission granting of KLDC's motion.

Also on April 10, 2017, PNG and Drake filed their response to KLDC's motion to intervene, which PNG and Drake requested that the Commission deny. As a basis for their objection, PNG and Drake argue that KLDC failed to state a special interest in this proceeding, noting that PNG and Drake have not hired or engaged any union employees or union contractors in Kentucky. PNG and Drake assert that KLDC's interest in advocating for workers who are not employed by or under contract with PNG and Drake furthers KLDC's commercial interest, and is therefore an insufficient interest to warrant granting KLDC's request to intervene.

On April 13, 2017, KLDC filed its reply to Delta's, PNG's, and Drake's, respective responses in opposition to KLDC's motion to intervene. In its reply, KLDC asserted that its special interest in this proceeding arises from KLDC's experience in workforce development and worker safety in the gas distribution and power plant industries, and that said experience is within the scope of this proceeding and would assist the Commission in evaluating the proposed transaction. KLDC further asserted that a significant percentage of its members work in the pipeline industry. KLDC acknowledged that the Attorney General of the Commonwealth of Kentucky ("Attorney General") had been granted intervention in this matter, but argued that the Attorney General's interest in this proceeding is different from that of KLDC because the Attorney General represents the interest of consumers, while KLDC represents the interest of workers, who may have different interests than consumers. Finally, KLDC stated that, while it may not represent Delta's workers, it does represent other energy workers, and that because Delta is a

significant employer, workplace issues at Delta may affect the energy industry in the region.

Based on the motion to intervene, responses, and reply, and being otherwise sufficiently advised, the Commission finds that the only person who has a statutory right to intervene in a Commission case is the Attorney General, pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sound discretion of the Commission.¹ The Court of Appeals has held that the Commission's discretion to grant or deny a motion for intervention is not unlimited, and has enumerated the limits on the Commission's discretion, with one arising under statute, the other under regulation.² The statutory limitation, KRS 278.040(2), requires that "the person seeking intervention must have an interest in the 'rates' or 'service' of a utility, since those are the only two subjects under the jurisdiction of the PSC."³

The regulatory limitation is set forth in 807 KAR 5:001, Section 4(11)(a), which requires a person to demonstrate either (1) a special interest in the proceeding which is not otherwise adequately represented in the case, or (2) that intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

In analyzing the pending motion to intervene, we find KLDC does not receive service from Delta, is not a customer of Delta, and does not pay any rates charged by Delta. In addition, although the Commission has in prior transfer of control cases granted

¹ *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1966).

² *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007).

³ *Id.* at 3.

intervention to labor unions who represent affected employees, here KLDC does not represent any Delta employees. Therefore, KLDC lacks the necessary interest in the proposed acquisition of Delta sufficient to justify intervention. The only interest that KLDC has in the rates and service of Delta is as a labor organization with a generalized interest in this proceeding. That interest is too remote to justify intervention here.

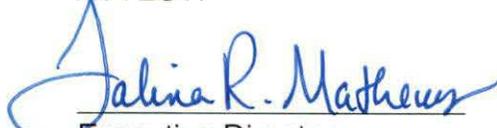
KLDC will have ample opportunity to participate in this proceeding even though it is not granted intervenor status. It can review all public documents filed in this case and monitor the proceedings via the Commission's website at the following web address: https://psc.ky.gov/PSC_WebNet/ViewCaseFilings.aspx?Case=125. In addition, KLDC may file comments as frequently as it chooses, and those comments will be entered into the record of this case. Finally, if a formal evidentiary hearing is held, KLDC will be provided an opportunity at the beginning to present any information that it wishes for the Commission's consideration in this matter.

IT IS HEREBY ORDERED that KLDC's motion to intervene is denied.

By the Commission



ATTEST:


Executive Director

*Emily Bennett
Delta Natural Gas Company, Inc.
3617 Lexington Road
Winchester, KY 40391

*Honorable Francis J Mellen, Jr.
Wyatt, Tarrant & Combs, LLP
500 West Jefferson Street
Suite 2800
Louisville, KENTUCKY 40202-2898

*Kent Chandler
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Larry Cook
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Monica Braun
STOLL KEENON OGDEN PLLC
300 West Vine Street
Suite 2100
Lexington, KENTUCKY 40507-1801

*Delta Natural Gas Company, Inc.
3617 Lexington Road
Winchester, KY 40391

*Rebecca W Goodman
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204