

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

By Order entered on July 13, 2017 (“July 13, 2017 Order”), the Commission found that the acquisition of Delta Natural Gas Company, Inc. (“Delta”) by PNG Companies LLC (“PNG”) should be approved on the condition that the Chief Executive Officers of Delta, PNG, Drake Merger Sub Inc. (“Drake”), SteelRiver Infrastructure Fund North America LP (“SRIFNA”), and SteelRiver LDC Investments LP (“SRLDCI”) (collectively, “Joint Applicants”) file written acknowledgement accepting and agreeing to be bound by all of the commitments made during the course of this proceeding, as specifically enumerated in the Appendix to the July 13, 2017 Order. Ordering paragraph 1 of the July 13, 2017 Order required that the written acknowledgement be filed within seven days of the date of the Order.

On July 17, 2017, Delta’s Chief Executive Officer, Glenn R. Jennings, filed written acknowledgement accepting and agreeing to be bound by all of the commitments enumerated in the Appendix to the July 13, 2017 Order.

On July 18, 2017, PNG’s Chief Executive Officer Morgan K. O’Brien filed written acknowledgement (“PNG’s Acknowledgment”) on behalf of PNG and Drake accepting

and agreeing to be bound by all of the commitments enumerated in the Appendix to the July 13, 2017 Order. In PNG's Acknowledgement, Mr. O'Brien further stated:

I hereby advise the Commission that I have been advised that the Funds [SRIFNA and SRLDCI] reaffirm the statement at page 5 of [John] McGuire's [SRIFNA and SRLDCI Chief Legal Officer] testimony that the Funds, through PNG, are willing to make necessary and appropriate investments in the facilities of Delta to enable PNG to perform its commitments, with the understanding that under the "regulatory compact," they will be permitted to receive a fair rate of return of and on their investment in such facilities in a timely manner. If the foregoing does not satisfy the condition at page 9, paragraph 3, of the Order, please notify the undersigned or PNG's counsel in this proceeding, Frank Mellen.

Having reviewed PNG's acknowledgement and being otherwise sufficiently advised, the Commission finds that the acknowledgement conveyed on behalf of SRIFNA and SRLDCI is not an "accept[ance] and agree[ment] to be bound by" the commitments set forth in the Appendix to our July 13, 2017 Order and does not satisfy the condition set forth in ordering paragraph 1 of the July 13, 2017 Order. Therefore, the conditional approval of the acquisition of Delta as granted in the July 13, 2017 Order has not become unconditional, and this case should be reopened to supplement the record.

The Commission further finds that, within seven days of the date of this Order, the Chief Legal Officer of SRIFNA and SRLDCI should file either an unconditional acknowledgement accepting and agreeing to be bound by all of the commitments enumerated in the Appendix to the July 13, 2017 Order or clarify why he cannot, on behalf of SRIFNA and SRLDCI, accept and agree to be bound by the commitments set forth in the Appendix to that Order.

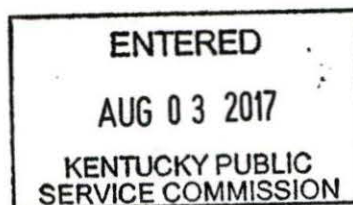
The Commission must address the assertion in PNG's Acknowledgement that, "under the regulatory compact," the Joint Applicants are permitted "to receive a fair rate of return of and on their investment . . . in a timely manner." The Commission cannot defer to the Joint Applicants as to what constitutes fair, just, and reasonable rates, which include a return of investment through depreciation expense and a return on investment through a rate of return on rate base or capital dedicated to public service. Neither can the Commission defer to the Joint Applicants as to what constitutes timely recovery of a fair return of and on their investment. In any proceeding involving an investigation of utility rates, the Commission must fully consider and weigh the totality of the evidence to determine its credibility and then apply its ratemaking expertise, including its judgement as to current and anticipated economic conditions, to make an independent determination regarding a rate of return that is fair, just, and reasonable. Further, the Commission can grant only the opportunity to earn a fair rate of return. Lastly, the timeliness of the return on investment is dependent on many factors, including the timeliness of the applicant's request for rate recovery and the statutory provisions set forth in KRS Chapter 278.

IT IS THEREFORE ORDERED that:

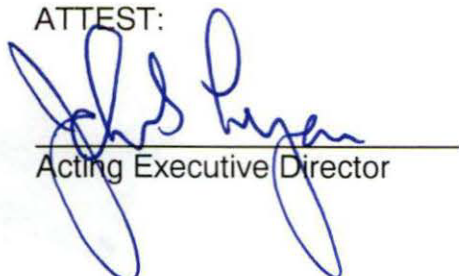
1. The conditional approval of the acquisition of Delta as granted in the July 13, 2017 Order has not become unconditional.
2. This case should be reopened to supplement the record.
3. Within seven days of the date of this Order the Chief Legal Officer of SRIFNA and SRLDCI shall file an unconditional acknowledgement accepting and agreeing to be bound by all of the commitments enumerated in the Appendix to the July

13, 2017 Order or clarify why he cannot unconditionally accept and agree to be bound by those commitments.

By the Commission



ATTEST:

  
Acting Executive Director

Case No. 2017-00125

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