

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE JOINT APPLICATION OF HERITAGE )  
OPERATING L.P. AND BRIGHT'S PROPANE )  
SERVICE, INC. FOR APPROVAL OF TRANSFER ) CASE NO. 2007-00494  
AND ACQUISITION OF ASSETS AND )  
CERTIFICATES OF PUBLIC CONVENIENCE )

O R D E R

Heritage Operating L.P. ("Heritage") and Bright's Propane Service, Inc. ("Bright's") (collectively "Joint Applicants") have applied for Commission approval of the transfer and acquisition of the assets of Bright's to Heritage.<sup>1</sup> The Joint Applicants also request that the Commission grant confidential treatment of certain information. By this Order, we approve the transfer and acquisition and grant the requested confidential protection.

The Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention ("AG"), was granted full intervention in this proceeding on December 17, 2007. A procedural schedule was established that authorized two rounds of discovery as well as the opportunity to request a hearing.

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<sup>1</sup> The Joint Applicants submitted their application on November 28, 2007. KRS 278.020(6) allows the Commission 60 days in which to review an application for approval of transfer and acquisition of control, unless it is necessary, upon a finding of good cause, to continue the application for an additional 60 days. On January 17, 2008, the Commission, in response to the Joint Applicants' request for an extension of time to respond to data requests, made such finding and extended the statutory review period to 120 days.

The Joint Applicants and the AG filed an Agreed Stipulation, which is appended hereto as Appendix A, on January 24, 2008 and jointly moved the Commission for a decision on the record.

### PROPOSED TRANSACTION

Bright's is a Kentucky corporation that owns and operates facilities used to distribute and sell manufactured gas to approximately 51 customers in Old Bridge Subdivision in Boyle County, Kentucky<sup>2</sup> and is a utility subject to the Commission's jurisdiction.<sup>3</sup> Its distribution system consists of an 18,000 gallon propane tank, approximately 11,925 feet of 2-inch plastic pipeline and approximately 5,100 feet of 3/4-inch service lines.<sup>4</sup> As of December 31, 2006, Bright's had a net utility plant valued at \$37,541.<sup>5</sup> For the calendar year 2006, Bright's recorded operating revenues of \$50,868 and utility operating expenses of \$43,679, resulting in net utility operating income of \$7,189.<sup>6</sup>

Heritage is a Delaware limited partnership authorized to do business in Kentucky. It is one of the three largest retail propane marketers in the United States. Heritage has 20 retail locations in Kentucky and maintains a corporate office at 200 Meijer Drive,

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<sup>2</sup> Application at 2.

<sup>3</sup> KRS 278.010(3)(b) and (c). The Commission declared Bright's a jurisdictional utility pursuant to KRS 278.010(3) in Case No. 1990-00091, Jurisdictional Status of Bright's Propane Service, Inc.'s Propane Distribution System. (Ky. PSC Feb. 15, 1991).

<sup>4</sup> Application at 2.

<sup>5</sup> Annual Report of Bright's to the Public Service Commission for the Year Ended December 31, 2006 at 9.

<sup>6</sup> Id. at 17.

Florence, Kentucky.<sup>7</sup> Heritage submitted financial information to the Commission relative to its total assets, operating revenues, and long-term debt, etc.

The Joint Applicants presented a proposed Agreement for Purchase and Sale of Assets ("Agreement") to the Commission on December 21, 2007. Pursuant to the Agreement, Heritage will purchase the utility assets of Bright's as well as the assets of Bright's Bottle Gas Co., a non-jurisdictional corporation. Heritage proposes to acquire the utility assets of Bright's for the sum of \$250,000.<sup>8</sup> Heritage does not intend to incur any new indebtedness to purchase the utility assets<sup>9</sup> and does not plan to increase rates for 1 year after the transaction.

Heritage intends to continue the utility operations at the same location with the same contact personnel and phone numbers<sup>10</sup> and to retain the current employees of Bright's. These employees include a senior service technician with 32 years' experience, two installation and delivery technicians with 21 years' experience, an installation and delivery technician with 12 years' experience and a safety director with 9 years' experience. Heritage states that, in addition to these employees, it has experienced staff available in its other offices. It further states that while it does not have experience operating a rate-regulated distribution system, it does have experience operating safety-regulated pipeline systems.<sup>11</sup>

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<sup>7</sup> Application at 2.

<sup>8</sup> Id. at 2.

<sup>9</sup> Application at 3.

<sup>10</sup> Id. at 5.

<sup>11</sup> Response to Commission Staff's First Data Request, Item 4.

The parties to this proceeding have entered into an Agreed Stipulation. The Agreed Stipulation includes 10 commitments made by the Joint Applicants. The parties request that the Commission enter an Order accepting the Agreed Stipulation in its entirety without modification and approve the proposed transfer and acquisition with the agreed commitments included as conditions of transfer.

#### STATUTORY STANDARD FOR TRANSFERS

KRS 278.020(5) provides that no person may acquire or transfer control or ownership of a utility without prior approval of the Commission. The Commission will approve such a transfer if it determines that the acquirer has the financial, technical, and managerial abilities to provide reasonable service. The Commission must also determine that the acquisition is made in accordance with the law, for a proper purpose, and is consistent with the public interest.<sup>12</sup> The Commission may grant an application upon terms and conditions it deems necessary to protect the public interest.

#### CONFIDENTIALITY ISSUE

During the processing of this case, the AG and Commission Staff requested information from the Joint Applicants. Upon responding to the information requests, Joint Applicants requested that certain information be held confidential. Specifically, the Joint Applicants requested that the Commission grant confidential protection to the information contained in Exhibits 1 and 3 to its December 21, 2007 responses to Commission Staff's First Data Request and to the information contained in its responses to the AG's First Data Request, Items 7 and 22. By letter dated January 4, 2008, the Commission's Executive Director denied the Joint Applicants' request for confidential

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<sup>12</sup> KRS 278.020(6).

treatment because their request did not contain sufficient justification or explanation to qualify the information for protection and because the Joint Applicants failed to redact and, thus, revealed the information in their response to Item 7 of the AG's First Data Request. On January 15, 2008, the Joint Applicants moved the Commission to reconsider the letter ruling denying confidential protection of the information.

KRS 61.872(1) provides that "[a]ll public records shall be open for inspection by any person, except as otherwise provided by KRS 61.884." KRS 61.878(1) establishes several classes of public records that are excluded from public inspection. Among those classes are documents "generally recognized as confidential or proprietary" whose disclosure would "permit an unfair commercial advantage to competitors of the entity that disclosed the records."<sup>13</sup>

The Joint Applicants resubmitted their responses and redacted the specific information for which they were seeking confidential protection. They also provided additional support for their confidentiality request. They assert that the information redacted from the responses to data requests concerns non-regulated activities and financial information of both applicants. They state that this non-regulated information is not available from any commercial source or on file with the Federal Energy Regulatory Commission, Security Exchange Commission, or any other public agency. In addition, Heritage states that it is a propane provider operating in a competitive market and disclosure of the information would permit its competitors not only to discover confidential financial information, but would also provide them with the identities of its pipeline customers.

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<sup>13</sup> KRS 61.878(1)(c)(1).

## CONCLUSION

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that Heritage has the financial, managerial, and technical abilities to provide reasonable service to customers of Bright's. We also find that the commitments made by the Joint Applicants are generally reasonable and should be imposed as conditions upon the transfer, with one exception and with some modifications.<sup>14</sup> The Commission does not believe that Commitment X of the Agreed Stipulation should be included as a condition of transfer. We find that it would be very difficult to determine Heritage's compliance with this commitment. In addition, since Heritage will be the surviving utility upon completion of the transaction, we find that the conditions should be imposed solely upon Heritage and not upon the Joint Applicants. Given that we are not accepting the terms of the Agreed Stipulation exactly as filed, we find that the parties should be required to notify us if they wish to withdraw from the Agreed Stipulation and that Heritage should be required to confirm that it agrees to be bound by the conditions imposed by the Commission. We also find that, with the imposition of the conditions, the proposed transfer is in accordance with law, is for a proper purpose, and is consistent with the public interest.

The Commission has further reviewed the Joint Applicants' request for confidentiality and finds that disclosure of the information redacted in Exhibits 1 and 3 of the Joint Applicants' responses to Commission Staff's First Data Request and their responses to Items 7 and 22 of the AG's First Data Request would result in competitive

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<sup>14</sup> See Appendix B to this Order.

harm to Heritage. Therefore, we find that the redacted information should be afforded confidential protection.

IT IS THEREFORE ORDERED that:

1. Subject to the conditions set forth in Appendix B to this Order, the transfer and acquisition of Bright's to Heritage is approved. The proposed transfer and acquisition shall not proceed unless, within 20 days of the date of this Order, written acknowledgement by Heritage's chief executive officer accepting and agreeing to be bound by these conditions is filed with the Commission.

2. The Agreed Stipulation is approved as modified herein.

3. Within 10 days of completion of the transfer, Heritage shall file with the Commission the journal entries used to record the purchase and identify the detailed plant accounts in which the assets are recorded.

4. Within 10 days of completion of the transfer, Heritage shall file with the Commission an adoption notice conforming to the requirements of Administrative Regulation 807 KAR 5:011, Section 15(6).

5. Within 10 days after the filing of its adoption notice with the Commission, Heritage shall issue and file in its own name a tariff in the form prescribed in Administrative Regulation 807 KAR 5:011.

6. Bright's shall submit to the Commission a financial and statistical report, as described in Administrative Regulation 807 KAR 5:006, Section 3, for the period in calendar year 2008 that it owned and operated the transferred assets.

7. Heritage shall submit to the Commission a financial and statistical report, as described in Administrative Regulation 807 KAR 5:006, Section 3, for the period in

calendar year 2008 that it owns and operates the transferred assets. This report must be based on accounts set up in conformity with the Uniform System of Accounts for gas utilities as prescribed by the Commission.

8. Joint Applicants' petition for confidential protection of that certain information in Exhibits 1 and 3 redacted from their responses to Commission Staff's First Data Request and their responses to Items 7 and 22 of the AG's First Data Request is granted.


9. If any party wishes to withdraw from the Agreed Stipulation because of the modifications ordered herein, it shall notify the Commission in writing within 10 days of the date of this Order.

Done at Frankfort, Kentucky, this 27th day of February, 2008.

By the Commission

Commissioner Clark Abstains.

ATTEST:



Executive Director



APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2007-00494 DATED FEBRUARY 27, 2008

Commonwealth of Kentucky  
Before the Public Service Commission

**RECEIVED**

JAN 24 2008

PUBLIC SERVICE  
COMMISSION

In the Matter of:

THE JOINT APPLICATION OF HERITAGE )  
OPERATING L.P. AND BRIGHT'S PROPANE )  
SERVICE, INC. FOR APPROVAL OF ) Case No. 2007-00494  
TRANSFER AND ACQUISITION OF ASSETS )  
AND CERTIFICATES OF PUBLIC )  
CONVENIENCE )

AGREED STIPULATION

The undersigned parties ("Parties"), by counsel, hereby advise the Public Service Commission ("Commission") that the Parties have agreed by written stipulation ("Stipulation") as follows:

WHEREAS, on November 29, 2007, Heritage Operating L.P. ("Heritage") and Bright's Propane Service, Inc. ("Bright's"), (collectively "Joint Applicants"), filed an application seeking approval of the transfer and acquisition of control of Bright's pursuant to KRS 278.020(5) and (6) and 807 KAR 5:001 Section 8 supporting the approval of the transfer and acquisition of control of Bright's; and

WHEREAS, Jack Conway, Attorney General for the Commonwealth of Kentucky, has been granted intervention in the case by the Commission; and

WHEREAS, the Attorney General has propounded two sets of requests for information in this proceeding and the Joint Applicants have answered and satisfied the Attorney General's requests ; and

WHEREAS, the Parties recognize that continued litigation of this proceeding could be lengthy and costly, and the Parties desire to settle the issues arising in this proceeding; and

WHEREAS, the Parties stipulate that the testimony filed by the Joint Applicants in this proceeding shall be deemed admitted into the record and may be relied upon by the Commission in rendering any orders in this proceeding; and

WHEREAS, the Parties will endeavor to obtain prompt approval of this Stipulation by the Commission. The Parties do not intend to modify the relief sought in the application or other documents filed in support of the application, and this Stipulation shall not be deemed to be a new application. The Parties further request that the Commission issue its Order on this Stipulation as expeditiously as possible under KRS 278.020(6); and

WHEREAS, this Stipulation is supported by adequate data and information; represents a just and reasonable resolution of the issues raised in these proceedings; violates no regulatory principle or precedent; and is the product of knowledgeable and capable Parties. While this Stipulation is not binding on the Commission, it is entitled to careful consideration by the Commission; and

WHEREAS, this Stipulation is expressly conditioned upon its adoption by the Commission, in its entirety and without modification. Should the Commission reject or modify all or any part of this Stipulation or impose

additional or different conditions or requirements upon the Parties, the Parties shall have the right, within 20 days of service of the Commission's order, to file an application for rehearing pursuant to KRS 278.400. Upon the Commission's issuance of an Order on Rehearing that does not adopt the Stipulation in its entirety without material modification, any Party may terminate and withdraw from the Stipulation by filing a notice with the Commission within 15 days of the Commission's Order on Rehearing. Upon such notice of termination or withdrawal by any Party pursuant to the above provisions, the Stipulation shall immediately become null and void; and

WHEREAS, all of the Signatory Parties fully support this Stipulation and urge the Commission to accept and approve the terms hereof;

NOW THEREFORE, the Parties hereby agree, stipulate and recommend to the Commission that it issue an Order approving Joint Applicants' application submitted to the Commission on November 1, 2007 for approval of a transfer and acquisition of control of Bright's, subject to the following terms and conditions:

**I. ADOPTION OF CURRENTLY APPROVED RATES**

Immediately upon the closing of the transaction, the Joint Applicants will adopt the currently approved rates and tariffs used by Bright's Propane Service, Inc. and file same with the Commission.

## **II. RATE FREEZE OF ONE YEAR**

The Joint Applicants commit that the rates of Bright's Commission-jurisdictional customers will not be raised for the period of one year from the date of the approval of the transaction except for any change in commodity costs

## **III. RELIABILITY OF SYSTEM**

The Joint Applicants commit that Bright's Commission-jurisdictional system will be maintained and operated in a reliable manner. This includes the retention of the current employees, or the replacement of new employees with comparable skills and experience in the event the current employees in charge of the operations of Bright's leave.

## **IV. REASONABLE AND ADEQUATE SERVICE**

The Joint Applicants commit that reasonable and adequate service will continue to be provided to Bright's Commission-jurisdictional customers following the closing of the transaction.

## **V. CUSTOMER RELATIONS**

The Joint Applicants commit to maintain, if not exceed, the current level of customer relations with Bright's Commission-jurisdictional customers.

## **VI. RETENTION OF CURRENT EMPLOYEES**

The Joint Applicants commit that the current employees will be retained unless those individuals voluntarily elect to seek other employment. However, the Joint Applicants will in no way materially alter the employees' job

descriptions, workforce environment, salary or benefits in such a way as to effectively cause the employee(s) to voluntarily terminate employment.

**VII. NO ALLOCATION OF ACQUISITION PREMIUM TO COMMISSION-JURISDICTIONAL CUSTOMERS**

Any acquisition premium paid by Heritage for Bright's shall not be "pushed down", or otherwise allocated to Bright's current or future Commission-jurisdictional customers.

**VIII. NO CHANGE IN CONTROL PAYMENTS WILL BE ALLOCATED TO COMMISSION-JURISDICTIONAL CUSTOMERS**

No change in control payments will be allocated to Bright's current or future Commission-jurisdictional customers.

**IX. NO CROSS-SUBSIDIZATION WITH AFFILIATES**

Heritage commits to protect against cross-subsidization between its regulated and non-regulated operations in transactions with affiliates.

**X. FUTURE RATE CASE(S)**

The Joint Applicants commit that in any future rate case, Heritage will not seek a higher increase in its rates than it would have sought if the purchase had not occurred.

HAVE SEEN AND AGREED:



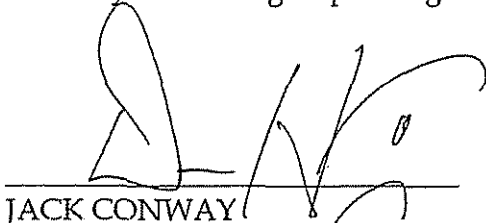
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## APPENDIX B

### APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2007-00494 DATED FEBRUARY 27, 2008

#### CONDITIONS OF TRANSFER AND ACQUISITION

1. Within 10 days of completion of the transfer, Heritage shall file with the Commission an adoption notice conforming to the requirements of Administrative Regulation 807 KAR 5:011, Section 15(6). In this notice, Heritage shall adopt and ratify as its own all of the rates, rules, classifications, and administrative regulations of Bright's on file with the Commission and effective at the time of the transfer.
2. Heritage will not seek to increase base rates for a period of 1 year from the date of this Order.
3. Heritage will maintain and operate the Bright's utility system in a reliable manner and continue to provide reasonable and adequate service to its customers.
4. Heritage will attempt to retain all current employees of Bright's and will not materially alter the job descriptions, workforce environment, salary, or benefits of such employees in order to bring about their separation.
5. Heritage will maintain, or exceed, the current level of relations with customers of Bright's.
6. No acquisition premium nor any transaction-related costs will be "pushed down" or otherwise allocated to customers of Bright's.
7. Heritage will protect against cross-subsidization between its regulated and non-regulated operations.