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February 5, 2015

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street – Filing Room  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Sharon Laffey v. Knox Energy Cooperative Association, Inc.;  
Docket No. C-2015-2462487; **PRELIMINARY OBJECTION OF KNOX  
ENERGY COOPERATIVE ASSOCIATION, INC.**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission (“Commission”) is the Preliminary Objection of Knox Energy Cooperative Association, Inc. (“Knox”) in the above-captioned proceeding. Knox is filing this Preliminary Objection on the basis of lack of Commission jurisdiction.

If you have any questions with regard to this filing, please direct them to me. Thank you for your attention to this matter.

Sincerely,

Steven K. Haas  
*Counsel to Knox Energy Cooperative  
Association, Inc.*

SKH/jld  
Enclosure  
cc: Sharon Laffey

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SHARON LAFFEY,

Complainant

v.

KNOX ENERGY COOPERATIVE  
ASSOCIATION, INC.

Respondent

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Docket No. C-2015-2462487

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**NOTICE TO PLEAD**

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TO: Sharon Laffey  
1066 South Sunset Beach Road  
Claysville, PA 15323

Pursuant to 52 Pa. Code §5.101(f), you are hereby notified that, if you do not file a written response to the enclosed Preliminary Objection of Knox Energy Cooperative Association, Inc. within ten (10) days from the date of its service, the Commission may render a decision based solely upon the information contained therein. Your response, if any, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on the undersigned counsel to Knox Energy Cooperative Association, Inc.



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*Counsel to Knox Energy Cooperative  
Association, Inc.*

DATED: February 5, 2015

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

SHARON LAFFEY, :  
Complainant :  
v. : Docket No. C-2015-2462487  
KNOX ENERGY COOPERATIVE :  
ASSOCIATION, INC. :  
Respondent :

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**PRELIMINARY OBJECTION OF  
KNOX ENERGY COOPERATIVE ASSOCIATION, INC.**

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NOW COMES Knox Energy Cooperative Association, Inc. (“Knox”) and files, pursuant to 52 Pa. Code § 5.101(a)(1), this Preliminary Objection on the basis of lack of Commission jurisdiction over the Formal Complaint filed by Sharon Laffey. In support thereof, Knox avers as follows:

**History of Knox**

1. By Order entered September 29, 2006, the Commission approved the Application of Gasco Distribution Systems, Inc. (“Gasco”) for the transfer of its Claysville, Pennsylvania Division’s assets to Utility Pipeline, Ltd. (“UPL”) and, immediately thereafter, to Knox. *Application of Gasco Distributions Systems, Inc.*; Docket No. A-120002F2001 (Order entered September 29, 2006) (“Gasco Order”). A copy of the Gasco Order is attached hereto as

**Appendix A.**

2. A threshold issue in the *Gasco* application proceeding was whether Knox was a bona fide cooperative association that was exempt from Commission regulation. In support of

its position that Knox was, in fact, a bona fide cooperative association, the Applicant cited to the necessary characteristics set forth in *Keystone Cooperative Association*, Docket No. P-00991710 (Order entered August 12, 1999), and *Re Adrian Water Company*, 53 Pa. PUC 139 (1979). As noted in these cases, the five characteristics are:

- (1) The purpose of the organization's internal structure is to furnish utility service;
- (2) the organization furnishes service, either directly or by contract with another organization, only to its members who are identified as such;
- (3) membership is limited to those who will avail themselves of the services furnished by the association;
- (4) control and ownership by each member is substantially equal;
- and (5) economic benefits are passed to the members on a substantially equal basis.

*Keystone; Adrian.*

3. As part of its review of the Gasco application, the Commission thoroughly analyzed the structure and characteristics of Knox in determining that Knox did, in fact, establish a *prima facie* case to support the conclusion that it was a bona fide cooperative association. (Gasco Order, pp. 8, 11).

4. In reaching its conclusion, the Commission noted, *inter alia*, the following:
  1. Knox's Articles of Incorporation provide that the association will be operated exclusively as a cooperative association for the purpose of installing and maintaining natural gas pipelines and purchasing and reselling natural gas;
  2. Knox furnishes service directly or by contract with another organization exclusively to its members, and that membership in the association is limited to those who avail themselves of the services provided by the association;
  3. Knox's First Amended Code of Regulations and By-Laws provide that each member in good standing is entitled to one vote regarding the association's business;



4. Knox submitted a copy of its letter determination from the Exempt Organizations section of the Internal Revenue Service, stating that Knox is exempt from federal income tax under section 501(a) of the Internal Revenue Code, 26 U.S.C. §501;<sup>1</sup>
5. Knox provided copies of decisions from the Public Utilities Commission of Ohio which concluded that Knox is a not-for-profit cooperative and its gas pipeline facilities are exempt from regulation by the Commission, with the exception of gas pipeline safety regulation;
6. Ownership and control of the association by each member is substantially equal; and
7. Economic benefits of the association will be passed on to members on a substantially equal basis.

8. After a thorough review of the extensive record in the proceeding, the

Commission concluded:

. . . the applicants have established a *prima facie* case to support their contention that Knox Energy is a bona fide cooperative association, for the purposes of this transaction. We base our determination on the representations in the application and other documents submitted to the Commission, the IRS 501(c)(12) letter determination, and Knox Energy's status as a cooperative in Ohio.

Gasco Order, at p. 7-8.

9. In Ordering Paragraph 1, the Commission ordered, "[t]hat Applicants have established a *prima facie* case to support their contention that Knox Energy Cooperative Association is a bona fide cooperative for purposes of this transaction. Order, at p. 11.

10. Knox is a bona fide cooperative association.

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<sup>1</sup> Section 501(c)(12) exempts from taxation "mutual or cooperative" electric and telephone companies as well as "like organizations." 26 U.S.C. §501(c)(12). The IRS determined that "like organizations" include natural gas cooperatives. Rev. Rul. 67-265; Rev. Rul. 83-170.

### **Background of Complaint**

11. The Complainant, Sharon Laffey, resides at 1066 South Sunset Beach Road, in Claysville, PA. She is a member of Knox and is serviced by its Claysville system, which is the system at issue in the proceeding described above.

12. On or about December 22, 2014, Ms. Laffey filed a Formal Complaint against Knox. She alleges in her complaint that the gas line that serves her house sticks out of the ground for several feet, which condition constitutes a hazard. Knox is filing an Answer to Ms. Laffey's Formal Complaint on this same date. Knox's Answer is incorporated herein by reference.

### **Lack of Commission Jurisdiction**

13. There have been no changes in the structure or governance procedures of Knox that would alter or impact its status as a bona fide cooperative association, and there have been no orders, directives or pronouncements from any federal or state government agencies since 2006 that alter or impact Knox's status as a bona fide cooperative association. Knox remains a bona fide cooperative association.

14. Section 102 of the PA Public Utility Code states that the term "public utility" does not include "any bona fide cooperative association which furnishes service only to its stockholders or members on a nonprofit basis." 66 Pa. Code §102.

15. Formal Complaints against entities determined to be bona fide cooperative associations must be dismissed due to a lack of Commission jurisdiction. See, e.g. *John F. Mellon v. Morea Citizens Water Company*, 1991 Pa. PUC Lexis 91, Docket No. C-902997 (Order dated May 20, 1991).

16. As a bona fide cooperative association, Knox is not subject to the jurisdiction of the Commission. Accordingly, Ms. Laffey's Formal Complaint must be dismissed. The proper avenue for Knox members to seek consideration of service complaints is through the cooperative association itself.

WHEREFORE, for the reasons set forth above, Knox Energy Cooperative Association, Inc. respectfully requests that the Commission dismiss preliminarily the Formal Complaint of Sharon Laffey on the basis of lack of jurisdiction.

Respectfully submitted,



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*Counsel to Knox Energy Cooperative  
Association, Inc.*

DATED: February 5, 2015

# **APPENDIX A**



**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265**

Public Meeting held September 28, 2006

**Commissioners Present:**

Wendell F. Holland, Chairman  
James H. Cawley, Vice Chairman  
Bill Shane  
Kim Pizzingrilli  
Terrance J. Fitzpatrick

**DOCKETED**  
MAR 30 2007

Application of Gasco Distribution Systems, Inc. for Approval of the Transfer of its Claysville Division's Assets to Utility Pipeline Ltd. and Immediately Thereafter to Knox Energy Cooperative Association, Inc. and for the Abandonment of Service by Gasco Distribution Systems, Inc.

A-120002F2001

**ORDER**

**DOCUMENT  
FOLDER**

**BY THE COMMISSION:**

On November 1, 2005, Gasco Distribution Systems, Inc. ("Gasco") filed an application, pursuant to 66 Pa. C.S. § 1102(a)(3), for approval of the transfer of its Claysville Division's assets and facilities to Utility Pipeline Ltd. ("UPL") and immediately thereafter to Knox Energy Cooperative Association, Inc. ("Knox Energy") and for Gasco's abandonment of service under 66 Pa. C.S. § 1103(a)(2). The application was submitted jointly by Gasco, UPL and Knox Energy. The application was served on the Office of Trial Staff ("OTS"), the Office of Consumer Advocate ("OCA"), and the Office of Small Business Advocate ("OSBA"). Notice of the application was published in the Pennsylvania Bulletin on November 12, 2005.

Columbia Gas Transmission Corporation filed a Petition to Intervene on November 23, 2005. The OCA filed a Notice of Intervention and Public Statement on November 28, 2005. The OTS filed a Notice of Appearance on November 30, 2005. In addition, the Mayor of the Borough of Claysville filed a letter in support of the transaction. Subsequently, Gasco met or spoke with the intervenors in order to satisfy their concerns, and by May 15, 2006, all interventions were withdrawn.

### **Background**

Gasco, an Ohio Corporation, is a regulated public utility that provides natural gas service to approximately 1,200 residential and 100 commercial customers in the Borough of Claysville, Pennsylvania and surrounding areas. Gasco also owns a gas distribution system in the Kane, Pennsylvania area that serves approximately 3,400 customers as well as other small systems in Ohio, Kentucky, and Tennessee.

UPL, in business since 1995, is a privately-owned pipeline management company located in Ohio. UPL is primarily a pipeline engineering and construction company that designs, constructs, finances, and operates gas distribution systems in Ohio, Pennsylvania, and Indiana. In Pennsylvania, UPL constructed and operates the Keystone Cooperative Association, Inc. distribution system located in Windber. Since formation, UPL has constructed over 300 miles of new distribution systems for other companies seeking to provide new gas service into unserved areas. In doing so, UPL has also provided financing to third party companies, such as Knox Energy, to assist these companies with the upfront capital requirements necessary to construct, acquire, and upgrade pipeline distribution systems.

Knox Energy was formed in April, 1998 as a non-profit, member-owned gas cooperative to establish natural gas service in unserved residential communities in Ohio. Knox Energy has approximately 5,920 members located in nine separate project

areas throughout Ohio. As it is considered a bona fide cooperative in Ohio, Knox Energy is not subject to comprehensive regulation by the Ohio Public Utility Commission. Knox Energy is, however, subject to the Ohio Public Utility Commission's gas pipeline safety jurisdiction and, therefore, subject to annual safety and compliance audits. See O.R.C. § 4905.90(G).

### **Discussion**

Gasco and UPL entered into an Asset Purchase Agreement dated October 7, 2005, subject to Commission approval as sought in this application. In the instant application, Gasco, UPL and Knox Energy are seeking Commission approval of the transfer of Gasco's Claysville Division's assets and facilities to UPL, with the immediate assignment of the Claysville Division pipeline assets to Knox Energy.<sup>1</sup> After the transaction is complete, the responsibilities and obligations of UPL and Knox Energy will be as set forth in the 30-year term management agreement between the parties. See Application, Appendix L, First Amended Management Agreement ("Management Agreement"). Under the Management Agreement, UPL will act as the financier to assist Knox Energy with the transaction and will be obligated to provide ongoing pipeline operations and maintenance services to Knox Energy.

Applicants state that Knox Energy is a bona fide cooperative association pursuant to section 102 of the Public Utility Code, 66 Pa. C.S. § 102. Applicants also assert that Knox Energy meets the criteria for establishing a bona fide cooperative as set forth in *Keystone Cooperative Association*, Docket No. P-00991710 (order entered

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<sup>1</sup> The application states that "UPL proposes to transfer all of the newly acquired assets and facilities to Knox." ¶2. However, in a meeting between Commission staff, Gasco, UPL and Knox, the applicants clarified that assets assigned to Knox include only the "natural gas pipeline system". This statement is consistent with the formal assignment attached to the Asset Purchase Agreement in the Application. Thus, UPL will retain ownership of real property and assets such as vehicles and equipment.

August 12, 1999) and *Re Adrian Water Company*, 53 Pa. PUC 139 (1979). Section 102 of the Code states that the term "public utility" does not include "any bona fide cooperative association which furnishes service only to its stockholders or members on a nonprofit basis." 66 Pa. C.S. § 102. As established in prior Commission decisions, the characteristics of a bona fide cooperative are as follows:

- (1) the purpose of the organization's internal structure is to furnish [utility] service;
- (2) the organization furnishes service, either directly or by contract with another organization, only to its members who are identified as such;
- (3) membership is limited to those who will avail themselves of the services furnished by the association;
- (4) control and ownership by each member is substantially equal; and
- (5) economic benefits are passed to the members on a substantially equal basis.

*Keystone Cooperative Association*, Docket No. P-00991710 (order entered August 12, 1999) (citing *Re Adrian Water Co.*, 53 Pa. PUC 139 (1979)). All five of these characteristics must be present in order for an organization to qualify as a bona fide cooperative. *Valanty v. Cove Vill. Cmty. Trust*, Docket No. C-00945796 (order entered June 4, 1996).

Applicants cite to provisions of Knox Energy's Articles of Incorporation and Code of Regulations and By-Laws in support of their contention that Knox Energy is a bona fide cooperative. Specifically, Applicants state that the purpose of Knox Energy is to furnish utility service. Paragraph three of Knox Energy's Second Amended and Restated Articles of Incorporation provide that Knox Energy will be operated exclusively as a cooperative association "for the purpose of installing and maintaining natural gas pipelines and purchasing and reselling natural gas." Applicants additionally state that Knox Energy furnishes service directly to or by contract with another organization exclusively to its members and that membership is limited to those who avail themselves of the services furnished by the association. See Second Amended and Restated Articles of Incorporation, fourth paragraph.



Applicants further aver that the control and ownership of each member is substantially equal. Applicants refer to the First Amended Code of Regulations and By-Laws, Article II, Section 2.05, which provides that each member in good standing is entitled to one vote regarding the association's business transactions. Applicants state that Knox Energy's Board of Directors will consist of members of the cooperative and be subject to periodic elections, any member will be eligible to run for election to the Board, and UPL will not have any involvement or control over the Board. Moreover, no part of the net earnings of the association will benefit or be distributable to the association's trustees, officers, or other private individuals or organizations, except to pay reasonable compensation for services rendered, and that economic benefits will be passed on to members on a substantially equal basis. Second Amended and Restated Articles of Incorporation, fourth paragraph. As a result of this analysis, Applicants assert that although Knox Energy will not be a jurisdictional utility, it will be subject to the Commission's gas pipeline safety jurisdiction. (citing *Petition of Granger Energy of Honey Brook LLC*, Docket No. P-00032043 (order entered September 8, 2004) (*Granger Energy*)).<sup>2</sup>

As additional support of its status as a bona fide cooperative, Knox Energy provided the Commission staff with additional documentation. Knox Energy provided the Commission with a copy of its letter determination from the Exempt Organizations section of the Internal Revenue Service ("IRS"), stating that Knox Energy is exempt from federal income tax under section 501(a) of the Internal Revenue Code, 26 U.S.C. § 501,

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<sup>2</sup> The Commission does not view *Granger Energy* as broadly as the Applicants. *Granger Energy* involved a new landfill gas project intended to serve a very limited number of industrial customers. In *Granger Energy* the Commission held that landfill gas was regulated as natural gas or artificial gas but that Granger's service was not "to the public". Contrary to the Applicants' assertions (Application, ¶10, ¶36), *Granger Energy* does not stand for the proposition that the Commission can create a limited class of jurisdiction for gas safety purposes only. The directive to the Commission's Division of Gas Safety in *Granger Energy* was for staff to review the project's construction plans, not to create jurisdiction over an entity we held was not a public utility. The Public Utility Code does not contain a provision similar to Section 4905.90(G) of the Ohio Revised Code, which gives the Ohio Commission gas safety jurisdiction over otherwise non-jurisdictional entities. The General Assembly would have to amend the Public Utility Code to create such a special type of gas safety only jurisdiction in Pennsylvania.

as a 501(c)(12) organization and copies of Knox Energy's Returns of Organization Exempt from Income Tax (known as "Form 990") for 2003, 2004 and 2005.<sup>3</sup> Knox Energy also provided the Commission with several decisions from the Public Utilities Commission of Ohio, approving the transfer of regulated utilities' assets and customers to Knox Energy as a not-for-profit member-owned natural gas cooperative.<sup>4</sup> The Ohio PUC's decisions state that because Knox Energy is a not-for-profit cooperative, its gas pipeline facilities are exempt from regulation by the Public Utilities Commission of Ohio, with the exception of the gas pipeline safety regulations that require annual safety and compliance audits. See O.R.C. § 4905.90(G).

We have no difficulty concluding that Knox Energy meets the second and third criteria for a bona fide cooperative. Our difficulty with the remaining factors is caused by the high degree of UPL's involvement in the operations and management of the utility functions of the cooperative. The Commission has previously determined that the essential question when analyzing the characteristics of a bona fide cooperative is whether, in the absence of Commission regulation, the customers/members of the cooperative are able to exercise an adequate degree of control over the organization so as to protect themselves from unreasonable and arbitrary management decisions. See *Valanty v. Cove Vill. Cmty. Trust*, Docket No. C-00945796 (order entered June 4, 1996);

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<sup>3</sup> Section 501(c)(12) exempts from taxation "mutual or cooperative" electric and telephone companies as well as "like organizations." 26 U.S.C. §501(c)(12). The IRS has determined that "like organizations" include natural gas cooperatives. Rev. Rul. 67-265; Rev. Rul. 83-170. See also Internal Revenue Manual §4.76.20.

<sup>4</sup> See *In the Matter of the Joint Application of Horizon Utility Group, Inc. and Knox Energy Cooperative Association Inc. for Commission Approval of the Transfer of Assets and Customers*, Case No. 04-761-GA-ATR (order entered June 30, 2004); *In the Matter of the Application of Northern Industrial Energy Development, Inc. and Knox Energy Cooperative Association, Inc. to Substitute Natural Gas Delivery Service and Transfer Assets and Customers*, Case No. 05-1267-GA-ATR.

*Mobilfone of Northeastern Pennsylvania, Inc. v. the Professional Service Bureau of Luzerne County, Inc.*, 54 Pa. PUC 161 (1980).

Pursuant to the Management Agreement, UPL will be solely responsible for the provision of all ongoing utility operations and maintenance services. These services are described in detail in Article 3 of the First Amended Management Agreement and include virtually every aspect of Knox Energy's operations, both operational and financial, down to UPL's "signing of Knox Energy checks." Appendix L, Article 3(g)(4).<sup>5</sup>

UPL is financing the transaction, taking the financial risks, and is positioned to reap any profits that will result from the provision of gas service to Knox Energy's members. The maximum rates charged by Knox Energy to its members and Knox Energy and UPL's entitlement to those rates for the Claysville, Pennsylvania area are stated in the Management Agreement and have been set by Knox Energy and UPL at \$2.92 per mcf without any input from the individual members.<sup>6</sup> UPL's agreement with Knox Energy sets the base rate for gas without any input or approval by the Claysville customers. See Assignment attached to Appendix C and Project Attachment 11 attached to Appendix L. Of the charges to the members, Knox Energy will retain a \$25.00 one-time charge per member meter and UPL will retain a \$975.00 tie-in fee applicable to new physical connections. While these charges will not apply to existing Gasco customers who become members of Knox Energy, new members will be assessed these charges when applicable.

Our concerns notwithstanding, in the absence of hearings and an extensive record in this proceeding, the applicants have established a prima facie case to support

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<sup>5</sup> Even the interest on Knox Energy's checking and savings accounts goes to UPL. Application, Appendix L, Section 4 (except interest on membership fees and no-pay accounts).

their contention that Knox Energy is a bona fide cooperative association for the purposes of this transaction. We base our determination on the representations in the application and other documents submitted to the Commission, the IRS 501(c)(12) letter determination, and Knox Energy's status as a cooperative in Ohio.

Nevertheless, we remain concerned about the level of control that UPL will be exercising over the cooperative association and its members. We caution Knox Energy and UPL that our determination herein is limited to a finding that Knox Energy is a bona fide cooperative for the purpose of this transaction only. Our determination today does not mean the Commission will find Knox Energy's Claysville system, or any other Pennsylvania natural gas distribution systems Knox Energy may create or acquire in the future, to be non-jurisdictional if Knox Energy fails to maintain itself as a bona fide cooperative. To that extent, we will require Knox Energy and UPL to notify the Commission of the occurrence of any event relevant to its status as a cooperative. Such an event would include, but not be limited to, any ruling, adverse or supportive, by the IRS or any state regarding Knox Energy's cooperative status.

We turn now to the substantive aspect of the transaction, Gasco's request to transfer its Claysville Division assets and operations to UPL/Knox Energy. Pursuant to Section 1103(a) of the Public Utility Code, 66 Pa.C.S. § 1103(a), the Commission may grant a certificate of public convenience only if "the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public." In addition, the courts have further ruled that the Commission is obligated to conduct a public interest analysis regarding the transaction to see whether the public will receive an affirmative benefit from it. See *City of York v. Pennsylvania Public Utility Commission*, 449 Pa. 136, 295 A.2d 825 (1972).

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<sup>6</sup> The new base rate includes a \$9.00 per month customer charge and a \$2.92 per mcf delivery charge.



The application asserts that the Claysville customers will receive numerous benefits as a result of the transfer of Gasco to UPL and Knox Energy. UPL and Knox Energy have agreed to freeze base rates for three years. In addition to the rate freeze, Knox Energy has indicated it will commit to invest a minimum of \$35,000 per year for each of the next five years in new construction and pipeline replacement. See Application ¶34. Such replacement will benefit the long-term viability and safety of the system. We will incorporate these representations as conditions in this order.

We note that the Claysville Division customers have consumer protections under Chapter 56 of our regulations, as modified by Chapter 14 of the Public Utility Code. 52 Pa.Code Ch. 56, 66 Pa.C.S. Ch. 14.<sup>7</sup> Perhaps, the most significant protections provided by Chapters 14 and 56 are the winter termination procedures. See 66 Pa.C.S. §1406(e), 52 Pa.Code §56.100.

The application did not establish that Knox Energy has any restrictions on winter termination similar to those in Chapters 14 and 56. Commission staff ascertained that Knox Energy does not have written winter termination procedures. Instead, Knox Energy and UPL assert that for at least the past three years, they have had an informal (i.e., unwritten) policy instituted by Knox Energy's Board of Trustees that they do not shut off members for non-payment during periods when the weather is below freezing. We believe it would not be in the public interest to approve Gasco's abandonment of customers to non-jurisdictional service which did not include sufficient winter termination procedures. UPL and Knox Energy have indicated to this Commission that they would be willing to adopt written winter termination procedures applicable to at least the Claysville system members. Therefore, we will include the adoption of written

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<sup>7</sup> Gasco's 1995 Annual Report lists annual gas operating revenues in excess of \$7 million. This makes Gasco a "natural gas distribution utility" under Chapter 14. 66 Pa.C.S. §1403.

termination procedures equivalent to those in Chapters 14 and 56 as conditions in this order.

Moreover, recent findings from the Commission's Bureau of Audits ("Audits") reflect that Gasco has had some financial problems. In September 2003, the Audits prepared a Special Follow-up Report to the Gas Cost Rate Audit Report for Gasco Kane and Claysville Divisions at Docket No. D-03SPS028 ("Report"). In the Report, Audits analyzed audited financial statements of Gasco for the year ended June 30, 2002 in order to determine the general financial condition of the Corporation and the Corporation's future ability to pay its gas bills. Audits indicated that their findings revealed significant financial concerns. Specifically, Audits pointed out concerns with a number of financial ratios including the Company's current ratio, quick ratio, working capital, debt to worth ratio and debt to asset ratio. Furthermore, the Audits Report identified gas purchase arrearages. Based on the Audits Report, there is some question as to Gasco's financial fitness. We believe that the Claysville Division customers of Gasco would benefit due to the fact that UPL and Knox Energy appear to be more financially fit than Gasco.

The proposed transaction involves the unique circumstance of the transfer of a portion of a regulated public utility natural gas distribution system to a non-profit, member-owned Ohio cooperative corporation<sup>8</sup>. Based upon our analysis, the Commission finds that approval of the application is proper for the service, accommodation and convenience of the public and that the record provides substantial evidence of affirmative

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<sup>8</sup> The circumstances in this transaction are distinguishable from those in *Keystone Cooperative Association*, Docket No. P-00991710 (order entered Aug. 12, 1999). In that case, the cooperative association was formed to provide natural gas service to consumers who were in remote locations and did not have access to natural gas service. The customers in *Keystone* were never customers of a regulated utility and, therefore, were not afforded regulatory consumer protections.

public benefit sufficient to warrant approval of the transaction under *City of York v. Pennsylvania Public Utility Commission*, 449 Pa. 136, 295 A.2d 825 (1972). Nonetheless, we remain sufficiently concerned about the extent to which Knox Energy utilizes UPL, a for profit corporation, for many aspects of the cooperative's operations that we are requiring ongoing monitoring for the next three years by appropriate Commission staff as a condition for our approval of this application.

### **Conclusion**

Based upon the above analysis, the Commission will approve the transaction proposed in the application, subject to certain conditions set forth herein. Due to our stated concerns, including those regarding Gasco's previous financial problems, the Commission will monitor both UPL and Knox Energy for the next three (3) years, including, but not limited to, the distribution system, operations, and financial condition, through the Commission's Bureau of Audits and gas safety inspections by the Commission's Gas Safety Division, as staff deems appropriate, over a three-year time period. Moreover, the Commission directs that if there are any rulings related to Knox Energy's status as a bona fide cooperative, such as determinations from the IRS or the Public Utilities Commission of Ohio, that Knox Energy and/or UPL shall file such rulings with the Commission within thirty days of receipt of such determination.

For these reasons, we find that the application should be granted subject to the conditions discussed herein; **THEREFORE**,

### **IT IS ORDERED:**

1. That Applicants have established a prima facie case to support their contention that Knox Energy Cooperative Association, Inc. is a bona fide cooperative for purposes of this transaction.

2. That Knox Energy Cooperative Association, Inc. and Utility Pipeline Ltd. shall notify the Commission within 30 days of the occurrence of any event relative to Knox Energy Cooperative Association, Inc.'s status as a bona fide cooperative, including, but not limited to, any ruling or determination by the IRS or any state.

3. That the Application of Gasco Distribution Systems, Inc., Utility Pipeline Ltd., and Knox Energy Cooperative Association, Inc. is hereby approved subject to the conditions set forth herein.

4. That Gasco Distribution Systems, Inc. be issued a certificate of public convenience under Section 1102(a)(2), 66 Pa.C.S. § 1102(a)(3) for the transfer of its Claysville Division assets and facilities to Utility Pipeline, Ltd. and Knox Energy Cooperative Association, Inc. effective upon notice to the Commission of the closing of the transaction described herein.

5. That Gasco Distribution Systems, Inc. be issued a certificate of public convenience under Section 1102(a)(2), 66 Pa.C.S. § 1102(a)(2) for the abandonment of all customers in its Claysville Division to natural gas services provided by Utility Pipeline, Ltd. and Knox Energy Cooperative Association, Inc., which certificate shall be effective upon notice to the Commission of the closing of the transaction described herein.

6. That Gasco Distribution Systems, Inc. file a supplement to its current Pennsylvania tariff Pa. P.U.C. No. 2 within ten (10) days of the closing of the transaction described herein.

7. That Gasco Distribution Systems, Inc. file a true and correct copy of all closing documents with the Secretary at this docket within ten (10) days of the closing of the transaction described herein, and provide copies to each of the Gas Safety Division, the Law Bureau, the Bureau of Fixed Utility Services and the Bureau of Audits.

8. That Utility Pipeline Ltd. and Knox Energy Cooperative Association, Inc. shall freeze base rates for a period of three (3) years.



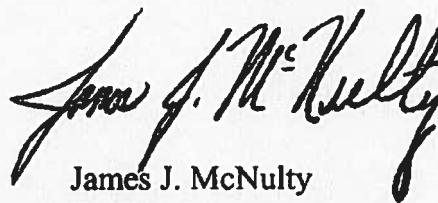
9. That Utility Pipeline Ltd. and Knox Energy Cooperative Association, Inc. shall invest a minimum of \$35,000 per year for the next five (5) years in new construction and pipeline replacement.

10. That within thirty days of the entry of this Order, Utility Pipeline Ltd. and Knox Energy Cooperative Association, Inc. shall adopt written winter termination procedures equivalent to those in chapters 14 and 56, specifically those in 66 Pa.C.S. § 1406(e) and 52 Pa. Code § 56.100, applicable to at least the Claysville members.

11. That the Commission's Bureau of Audits and Gas Safety Division shall monitor Utility Pipeline Ltd. and Knox Energy Cooperative Association, Inc. for compliance with this order for a period of three (3) years from the entry of this order; such monitoring to include, but not be limited to, the conditions stated in this order, and the operations and financial condition.

12. That this order does not constitute a determination that any rates listed in the Application are just and reasonable.

BY THE COMMISSION,



James J. McNulty  
Secretary

(SEAL)

**ORDER ADOPTED:** September 28, 2006

**ORDER ENTERED:**

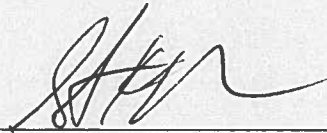
SEP 29 2006

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**SERVICE BY FIRST CLASS U.S. MAIL**

Sharon Laffey  
1066 South Sunset Beach Road  
Claysville, PA 15323



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Steven K. Haas

Dated: February 5, 2015

## VERIFICATION

I, Steven K. Haas, certify that I am legal counsel to Knox Energy Cooperative Association, Inc., and that, in this capacity, I am authorized to and do make this verification for them, that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief, and that I expect Knox Energy Cooperative Association, Inc. to be able to prove the same at any hearing hereof. I understand that false statements made therein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities.



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Steven K. Haas