**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In the Matter of the Application of Orwell :

Natural Gas Company For Commission :

Approval of the Transfer of its Distribution :

System Assets to Utility Pipeline Ltd. and :

immediately thereafter to Knox Energy : A-2015-2478270

Cooperative Association, Inc., a Bona Fide :

Cooperative, and for the Abandonment of :

all Pennsylvania Regulated Service by Orwell :

Natural Gas Company, with the Immediate :

Commencement of Service by Knox Energy :

Cooperative Association, Inc. :

**RECOMMENDED DECISION**

Before

Administrative Law Judge

Dennis J. Buckley

In this proceeding, the Applicants seek approval for the transfer of all of the distribution system assets and facilities of Orwell Natural Gas Company to Utility Pipeline Ltd., and, immediately thereafter, to Knox Energy Cooperative Association, a not-for-profit, member-owned bona fide cooperative association. Applicants seek approval of the technical “abandonment” of service by Orwell to customers in the Borough of Bruin, Butler County, Armstrong County, Jefferson County and Clarion County, Pennsylvania, with the immediate uninterrupted commencement of the provision of service by Knox under the same rates, terms and conditions of service now in place. The Applicants and the parties in this case have filed a unanimous Joint Petition for Approval of Application and Adoption of Settlement Agreement. It is recommended that the Commission approve the Settlement and, thereby, the Application.

HISTORY

On April 7, 2015 the Applicant, Orwell Natural Gas Company (Orwell), filed an Application with the Pennsylvania Public Utility Commission (Commission) seeking approval of the transfer of its distribution system assets to Utility Pipeline Ltd. (UPL), and immediately thereafter to Knox Energy Cooperative Association, Inc. (Knox), and for the abandonment of all Pennsylvania regulated service by Orwell, with the immediate commencement of service by Knox.[[1]](#footnote-1)

Public Notice of the Application was published in the May 2, 2015 *Pennsylvania Bulletin*.[[2]](#footnote-2) Notice was also posted in two newspapers of general circulation in Orwell’s service territory.

On May 18, 2015, the OCA filed a Protest to the Application in which it raised certain concerns about the Application. In its Protest, the OCA advocated for the imposition of a number of conditions as part of the grant of any abandonment, including: 1) a 3-year base rate freeze; 2) implementation of winter termination procedures consistent with the other Pennsylvania Knox service areas; 3) monitoring by the Commission’s Bureau of Audits and Pipeline Safety Division for 3 years; 4) written procedures for complaint resolution including procedures to resolve customer complaints directly by the Board of Trustees.

UPL, Knox and the OCA engaged in settlement discussions and agreed on terms for the resolution of all issues raised by the OCA in its Protest, and on July 20, 2015, the parties filed a Joint Petition for Approval of Application and Adoption of Settlement Agreement. That Joint Petition incorporates as Attachment 1 a document entitled, “Agreement Between Utility Pipeline, Ltd., Knox Energy Cooperative Association, Inc. and the Pennsylvania Office of Consumer Advocate to Resolve the OCA’s Protest.”

On August 3, 2015, a Hearing Notice was issued that set September 29, 2015, as the date for an evidentiary hearing in this case.

On August 5, 2015, the parties filed a Joint Motion to Admit Evidence into the Record. Consequently, the hearing scheduled for September 29, 2015, was cancelled. The evidence consists of the factual statements set forth in the Application for Transfer of Assets and the attachments and exhibits included in the Application.

The record in this case closed on September 28, 2015 when counsel for Orwell advised the presiding officer that Orwell would not request a protective order in this proceeding. The parties have requested expedited consideration of the proposed Settlement, and no other protests or complaints with respect to the Application exist. Therefore, this case is ready for resolution.

FINDINGS OF FACT

The proposed Settlement in this case resolves discrete issues raised by the OCA. And while the case has been “settled,” and no issues remain outstanding, the Settlement is not an embodiment of *all* of the substantive terms and conditions of the transaction. One must fully review the Application in its “Confidential” form *with* attachments to understand the scope of the matter. Merely to articulate the issues settled by the Settlement agreement will not be adequate to resolve whether the Application is “in the public interest.” Therefore, the following Findings of Fact are offered to more fully detail what is set forth in the Application:

1. Orwell Natural Gas Company is an Ohio company that is also a Pennsylvania jurisdictional public utility. Application at 2; ¶ 1.

2. Orwell provides natural gas service to approximately 546 residential and approximately 56 commercial customers in the Borough of Bruin, Butler County, Armstrong County, Jefferson County and Clarion County, Pennsylvania. Application at 3; ¶¶ 1-2.

3. The number of customers, by class, to whom Orwell furnishes natural gas service through its distribution system as of February 1, 2015 is as follows:

Residential 546

Commercial 56

Total 602

Application at 3, 6; ¶¶ 2, 13.

4. Orwell has entered into an Asset Purchase Agreement with United Pipeline, Ltd., dated January 14, 2015, subject to Commission approval as sought in the Application. Application at 3, 10.

5. Immediately upon the approval of the transfer of the Pennsylvania distribution system assets to UPL, UPL proposes to transfer all of the newly acquired assets and facilities to Knox Energy Cooperative Association. Application at 3, 10.

6. The property to be transferred is the gas distribution assets owned by

Orwell, located in the Borough of Bruin, Butler County, Armstrong County, Jefferson County

and Clarion County, Pennsylvania. This system consists of small diameter (mostly 2” to 4") pipe

with about 19.87 miles of plastic main and about 11.62 miles of steel main. Application at 7; ¶ 18.

7. Utility Pipeline Ltd., is a privately-owned pipeline design, engineering, construction, financing and management company located in North Canton, Ohio. Application at 3, 7.

8. UPL, which has been in business since 1995, also provides administrative and maintenance services to gas distribution system operators in Ohio, Pennsylvania and Indiana. Application at 3, 7.

9. UPL has signed a thirty (30) year Management Agreement with Knox Energy Cooperative Association that will obligate UPL to provide ongoing pipeline administrative and maintenance services to Knox; these services will include all routine maintenance, customer billing, compliance, construction and gas purchasing services. This contract is a 30-year contract. Application at 4; ¶ 6.

10. Knox is a non-profit, member-owned, bona fide natural gas cooperative under Section 102 (Definitions) of the Pennsylvania Public Utility Code, 66 Pa. C.S.A. § 102, originally formed in 1998 to provide natural gas service to residential communities in Ohio. Application at 8; ¶ 22.

11. Knox is not a jurisdictional natural gas company in either Ohio or Pennsylvania, and is not subject to comprehensive regulation by the Ohio Public Utility Commission or the Commission. Knox is, however, required by law to follow U. S. Department of Transportation pipeline safety regulations. Further, Knox is subject to the Ohio Public Utility Commission's gas pipeline safety jurisdiction and, as such, is subject to annual safety and compliance audits. Knox employs in Pennsylvania all of the same safety procedures it observes in Ohio. Application at 5; ¶ 9.

12. As ordered by the Commission in the *Kane*[[3]](#footnote-3), *Claysville*[[4]](#footnote-4)*,* and *Sergeant[[5]](#footnote-5)* Orders, the Commission's Bureau of Audits and Gas Safety Division monitored UPL and Knox for compliance with the Orders for a period of three years following approval of each application, including, but not limited to, monitoring of the conditions stated in the Order, operations and financial condition. Application at 5; ¶ 9.

13. As reported in each of the annual monitoring reports issued by the Commission during the three year monitoring periods, no compliance issues or deficiencies were found with the applicable requirements of the Commission at Orders A-120002F2001, A-120002F2000 and A-2011-2239524. Application at 5; ¶ 9.

14. All of the real and personal property rights and interests of Orwell's Pennsylvania distribution system will be transferred to UPL pursuant to the Asset Purchase Agreement between Orwell and UPL, and immediately thereafter to Knox. Application at 7, 10.

15. The transfer from UPL to Knox will be free and clear of all liens and encumbrances. Application at 7, 10.

16. The consideration being paid to Orwell as described in the Asset Purchase

Agreement, namely $900,000, was determined by arms' length negotiation between the parties. UPL will be paying the purchase price to Orwell as described in Section 1.04 of the Asset Purchase Agreement. Application at 7, 10.

17. No portion of the purchase price will be financed by UPL. No investment securities are being transferred as part of the transaction. Application at 7, 10.

18. Knox shall have an ongoing obligation to repay UPL via a throughput fee in the rates specified in the assignment from UPL to Knox. Application at 10; ¶ 30.

19. The proposed transfer will not result in any interruption of service to any current Orwell customers. Application at 5; ¶ 11.

20. The parties will provide a written notification to all affected customers, to be enclosed in the monthly bills, describing the transaction and will make available upon request a copy of the Rules and Regulations for Knox. Application at 5-6; ¶ 11.

21. Knox maintains a dedicated field office in Kane, Pennsylvania and, along with the current subcontractors for Orwell's Pennsylvania systems, will be able to respond to any service issues on the system in a timely manner. Application at 6; ¶ 12.

22. Knox will continue to repair and maintain the system and provide safe, reliable service to all of Orwell's former customers. Application at 6; ¶ 12.

23. The rates to be established by Knox for current Orwell customers shall be set with the primary objective being to match or be equivalent to the current rates in effect for current Knox members in the former Gasco Distribution Systems, Inc. and Sergeant Gas Company service territories. Application at 10; 32.

24. Current Orwell customers will be charged the same rates for natural gas service that are charged to current Knox members. Application at 11; ¶ 34.

25. Current Orwell customers will also be provided the same terms of service provided to all Knox members. Application at 11; ¶ 34.

26. On an annual basis for the three (3) year period following approval of the Application by the Commission, UPL and Knox will provide to the Commission and the OCA a report containing, at a minimum, the following information with respect to the Orwell system:

(a) overall customers gained or lost;

(b) an overview of customer service issues;

(c) the current gas cost rate; and,

(d) a list of capital investments and upgrades to the system, and a projection of the same for the following calendar year.

Application at 11; ¶ 35.

27. UPL and Knox have no intention or plans to abandon service to any current Orwell customers after approval of the Application by the Commission. Application at 11; ¶ 36.

28. UPL and Knox will guarantee that service to current Orwell customers will not be abandoned for five (5) years following approval of the Application by the Commission, or UPL will pay all reasonable conversion costs for all affected customers. Application at 11; ¶ 36.

29. All special and general assessments issued by the Commission and charged to Orwell have been paid. Application at 12, ¶ 40.

30. Any assessments issued by the Commission and charged to Orwell prior to the date of transfer will be paid by Orwell. Application at 12, ¶ 41.

DISCUSSION

A. JOINT MOTION TO ADMIT EVIDENCE INTO THE RECORD

On August 5, 2015, the parties filed a Joint Motion to Admit Evidence into the Record (Joint Motion). Consequently, the evidentiary hearing scheduled for September 29, 2015, was cancelled. Of course, there must be an evidentiary record for the presiding officer and then the Commission to act upon, so the Joint Motion was filed. The Joint Motion identifies evidence which consists of the averred factual statements set forth in the Application for Transfer of Assets and the attachments and exhibits included in the Application. Therefore, the Joint Motion will be granted and the evidence admitted into the record.

B. SETTLEMENT TERMS

As stated above, the proposed Settlement in this case is not so much an embodiment of all of the substantive terms and conditions of the agreed upon Application and attachments as it is the agreement reached among the parties with respect to specific issues raised by the OCA. The evidence of record and the Settlement must be viewed comprehensively in order to understand the case before the Commission.

Commission policy promotes settlements. 52 Pa. Code §5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative hearing resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code §69.401. Many proceedings are expensive to litigate, and the cost of such litigation at a reasonable level is an operating expense recovered in the rates approved by the Commission. This means that a settlement, which allows the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and reply exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission’s decision, yields significant expense savings for the company’s customers. That is one reason why settlements are encouraged by long-standing Commission policy.

In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm’n v. C S Water and Sewer Assoc.*, 74 Pa. PUC 767 (1991); *Pa. Pub. Util. Comm’n v. Philadelphia Electric Co.*, 60 Pa. PUC 1 (1985).

Applying the foregoing principles, and for reasons which will be set forth more fully, below, I recommend approval of the Joint Settlement by the Commission.

The following terms, which will be implemented immediately upon approval of the Application by the Commission, have been agreed upon by UPL, Knox and the OCA as a

satisfaction of the OCA’s Protest in this proceeding:

A. Rates. Current Orwell customers will be charged the same rates for natural gas distribution service as they are today for a period of three years after which the rates will be unified with the rates of other Knox customers in the region. Current Orwell customers will also be provided the same terms of service that are provided to all Knox members in other service areas.

B. Winter Termination Procedures. Attached as Appendix A [to the Settlement] are Knox’s winter termination procedures that are applicable to all Knox members. These winter termination procedures will be included on the Knox website and will be applicable to current Orwell customers following approval of this Application. A copy of Appendix A will be mailed to all Orwell customers upon approval of the Application by the Commission.

C. Commission Audits/Inspections. The Commission has explicit authority to audit and inspect UPL’s and Knox’s operations in the Orwell service area for compliance with applicable gas safety requirements so no additional safety monitoring is required.

D. Member Complaint/Issue/Suggestion Procedures. Attached [to the Settlement] as Appendix B are the following documents associated with procedures for raising complaints, issues or suggestions with Knox: (1) a Complaint Resolution Process form; (2) procedures for raising issues or suggestions for consideration by the Knox Board of Trustees; and (3) an “Issues and Suggestion” form. The procedures described in these forms will be applicable to all Knox members, including new Orwell customers. Each of these forms will be available for review and download on the Knox website. In addition, each of these forms will be mailed to all Orwell customers upon approval of the Application by the Commission.

E. Annual Report by UPL. On an annual basis for the three (3) years following approval of the Application by the Commission, UPL and Knox will provide to the Commission and the OCA a report containing, at a minimum, the following information with respect to the Orwell system:

(1) overall customers gained or lost;

(2) an overview of customer service issues;

(3) the current gas cost rate; and

(4) a list of capital investments and upgrades to the system, and

a projection of the same for the following calendar year.

F. Annual Membership Meetings. UPL will agree to recommend to the Knox Board of Trustees, reasonable and practical steps that could be taken by Knox to increase the accessibility of membership meetings to members residing in Pennsylvania, possibly including such measures as a dial-in capability, web-casting, or holding special board meetings in Pennsylvania subject to member interest in such measures and Knox Board of Trustee approval of same. UPL and Knox agree to provide progress reports to the Commission and the OCA as to these initiatives within six (6) months following approval of the Application, and to further provide updated information in each Annual Report as provided for in Section E. herein.

Joint Petition at 5-7.

The Commission must determine that a settlement is in the public interest in order to approve it. *Pa. Pub. Util. Comm'n v. The York Water Company*, PUC Docket No.

R-00049165, Order entered October 4, 2004; *Pa. Pub. Util. Comm'n v. C S Water and Sewer Associates*, 74 Pa. PUC 767 (1991); I&E Stmt. in Support at 4, quoting *Pa. Pub. Util. Comm'n v. Philadelphia Electric Company*, 6 Pa. PUC 1, 22 (1985). In the present case, the OCA has signed an agreement which fully resolves its outstanding issues. The public interest is served both by the resolution of those issues and by avoiding the expense of full litigation. It is, therefore, recommended that the proposed Joint Settlement Agreement be approved.

C. JOINT SUPPORTING STATEMENT.

In the Joint Petition for Approval of the Application and Adoption of the Settlement Agreement, the parties offer a joint supporting statement cast as, “Reason for Approving the Application.” At Paragraph No. 37 of the Application, the Applicants identified a number of benefits that will result from approval of the Application, including:

(1) An expanded membership will enable Knox to negotiate better gas

purchase and pipeline capacity agreements.

(2) The acquisition will provide long term financial viability to a small

gas system that faces financial challenges and in turn will provide stability

and certainty for Orwell’s customers.

(3) Knox has established procedures for complaint resolution for all

members by a Board of Directors that also are customers and members of

Knox. Knox currently has no known pending legal issues with any vendor

or member.

See also, Joint Petition at 4-5, ¶ 9.

In addition, and as described above, the Settlement Agreement with the OCA establishes a number of conditions that modify the Application. The parties agree that approval of the Application will benefit both existing Knox members and current Orwell customers. Joint Petition at 7, ¶ 12.

D. RECOMMENDATION

Section 1102(a) of the Public Utility Code requires regulated utilities to acquire a certificate of public convenience in order to transfer assets and abandon service. 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.[[6]](#footnote-6)

The determination of whether a transaction provides substantial public benefits is not dependent on a single factor but is a balancing of factors. *Popowsky v. Pennsylvania Public Utility Commission*, 594 Pa. 583, 937 A.2d 1040 (2007). The Applicants seek approval for the transfer of all of Orwell’s distribution system assets and facilities to UPL and, immediately thereafter, to Knox Energy Cooperative Association, and for the technical “abandonment” of service by Orwell to customers in the Borough of Bruin, Butler County, Armstrong County, Jefferson County and Clarion County, Pennsylvania, with the immediate uninterrupted commencement of the provision of service by Knox. I note many similarities between this case and that of Sergeant Gas Company (*Sergeant Order*), in the analysis of the status of Knox as a *bona fide* natural gas cooperative. The outcome that I recommend in this case is consistent with the Commission’s resolution of that matter.

The proposed transfer will not result in any interruption of service to any current Orwell customers. Obviously, the uninterrupted provision of service, along with the continuation of safe operations, is of paramount interest to the customers and to the Commission.

With respect to operations, the Application provides that Knox maintains a dedicated field office in Kane, Pennsylvania and, along with the current subcontractors for Orwell's Pennsylvania systems, will be able to respond to any service issues on the system in a timely manner. Knox will continue to repair and maintain the system and provide safe, reliable service to all of Orwell's former customers.

With respect to rates, current Orwell customers will be charged the same rates for natural gas distribution service as they are today for a period of three years after which the rates will be unified with the rates of other Knox customers in the region. Current Orwell customers will also be provided the same terms of service that are provided to all Knox members in other service areas.

I note that the current customers of Orwell were provided with notice of the proposed transfer, and that none have filed a protest or contested the proposed transaction.

In sum, the Application reflects a transaction that is in the public interest, and it is recommended that the Commission grant the Application and approve the related Joint Settlement without modification.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa. C.S. § 1102(a)(3).

2. The Applicant has the burden of proof in this proceeding to establish that it is entitled to the relief it is seeking. 66 Pa. C.S. § 332(a).

3. The degree of proof required to establish a case before the Commission is by a preponderance of evidence. *Samuel J. Lansberry, Inc. v. Pennsylvania Pub. Util. Comm’n*., 578 A.2d 600 (Pa. Cmwlth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992).

4. Approval of the Joint Petition for Settlement at Docket No. A-2015-2478270 is in the public interest.

5. Approval of the Application of Orwell Gas Natural Gas Company for the Transfer of its Distribution System Assets to Utility Pipeline Ltd. and immediately thereafter to Knox Energy Cooperative Association, Inc., and for the Abandonment of all Pennsylvania Regulated Service by Orwell Natural Gas Company, with the Immediate Commencement of Service by Knox Energy Cooperative Association, Inc., at Docket No. A-2015-2478270 is in the public interest.

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Motion to Admit Evidence into the Record filed on August 5, 2015, by the parties at Docket No. A-2015-2478270 is granted, and that the factual statements set forth in the Application for Transfer of Assets and the attachments and exhibits included in the Application are admitted into the record.

2. That the Commission approve the Joint Settlement Agreement filed on July 20, 2015, by the parties at Docket No. A-2015-2478270, without modification.

3. That the Commission approve the Application of Orwell Gas Natural Gas Company for the Transfer of its Distribution System Assets to Utility Pipeline Ltd. and immediately thereafter to Knox Energy Cooperative Association, Inc., and for the Abandonment of all Pennsylvania Regulated Service by Orwell Natural Gas Company, with the Immediate Commencement of Service by Knox Energy Cooperative Association, Inc. , filed on April 7, 2015 at Docket No. A-2015-2478270 as modified by the Joint Settlement Agreement.  
  
 4. That subject to Ordering paragraphs 5 and 6, below, and upon notice of the final Commission order approving the Application and Settlement, Utility Pipeline Ltd., shall file on behalf of Knox Energy Cooperative Association, Inc., tariff supplements for Orwell Gas Company’s current customers implementing rates and terms of service consistent with the rates and terms of service currently in effect for those customers.

5. That Orwell Gas Natural Gas Company be issued a certificate of public convenience under Section 1102(a)(2), 66 Pa. C.S. § 1102(a)(3) for the transfer of its distribution 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.

6. That Orwell Gas Natural Gas Company 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 the Borough of Bruin, Butler County, Armstrong County, Jefferson County

and Clarion County, Pennsylvania, for 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.

7. That upon compliance by the parties with the terms of the final Commission Order approving the Application and Settlement that this matter be marked closed.

Date: September 30, 2015 /s/

Dennis J. Buckley

Administrative Law Judge

1. The Application contains both a “Public” version and a “Confidential” version. Though no protective order was requested in this proceeding, the contents of the “Confidential” version of the Application and its attachments remain confidential. [↑](#footnote-ref-1)
2. 45 *Pa. B.* 2226 [↑](#footnote-ref-2)
3. *Application of Gasco Distribution Systems, Inc. for approval of the transfer of its Kane 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.*, Docket No. A-120002F2000 (Commission Order entered March 22, 2007). (*Gasco Abandonment Order*) [↑](#footnote-ref-3)
4. *Application of Gasco Distribution Systems, Inc. for approval of the transfer of its Claysville Division's assets,* Docket No. A-120002F2001 (Commission Order entered September 29, 2006). (*Claysville Order*) [↑](#footnote-ref-4)
5. *Application of Sergeant Gas Company for Commission Approval of the Transfer of its Distribution System Assets to Utility Pipeline, Ltd. and immediately thereafter to Knox Energy Cooperative Association, Inc. and for the Abandonment of all Pennsylvania Regulated Service by Sergeant Gas Company, with the Immediate Commencement of Service by Knox Energy Cooperative Association, Inc*., Docket No. A-2011-2239524 (Commission Order entered September 22, 2011). (*Sergeant Order*) [↑](#footnote-ref-5)
6. *City of York v. Pennsylvania Public Utility Commission*, 295 A.2d 825 (Pa. 1972); [↑](#footnote-ref-6)