

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE JOINT	)	
APPLICATION OF UTILITY PIPELINE	)	Case No. 17-1785-GA-ATR
LTD, LUDLOW NATURAL GAS	)	
COMPANY, LLC AND KNOX ENERGY	)	
COOPERATIVE ASSOCIATION FOR	)	
APPROVAL OF THE TRANSFER OF	)	
ASSETS AND SUBSTITUTION OF SERVICE	)	

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**Staff Review and Recommendation Concerning  
Transfer of Assets and Customers from Ludlow Natural Gas Company, LLC  
To The Knox Energy Cooperative Association**

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SCOPE OF THE REVIEW

The Staff of the Public Utilities Commission of Ohio has reviewed the application in the matter at bar as to whether the requested transfer of assets and customers from the Ludlow Natural Gas Company, LLC (Ludlow) to the Knox Energy Cooperative Association (Knox) is in accordance with: 1) the Commission's prior orders concerning the Ohio Rural Natural Gas Co-op (ORNG) system; 2) whether the transfer would result in the abandonment of service to the existing customers; and 3) whether Knox has the requisite expertise and resources to provide utility service to the transferred customers. For the reasons stated below the Staff supports the asset and customer transfer.

PROCEDURAL BACKGROUND

On July 15, 2016, Staff filed a report regarding the results of a series of investigations into the facilities, operations, and records of ORNG. Staff asserted that there had been multiple, repeated instances of non-compliance by ORNG from February 2015 to May 2016 and that ORNG's system is a potential threat to human life and property. Following an evidentiary hearing on September 6, 2016, the Commission issued an Opinion and Order on January 18, 2017, finding, pursuant to R.C. 4905.95(B), that ORNG is in violation of the Commission's rules for intrastate gas pipeline facilities and that ORNG's facilities are hazardous to human life and property. The Commission concluded that ORNG had not demonstrated that it has the requisite knowledge, training, organization, or procedures to safely operate a gas

pipeline system. The Commission directed ORNG to cease all operations, including connecting new customers, until it has corrected all of the violations in the Staff Report and can demonstrate that it has the knowledge and organization to consistently follow the gas pipeline safety regulations. *In re Ohio Rural Natural Gas Co-op*, Case No. 16-1578-GA-COI (*Investigation Case*), Opinion and Order (Jan. 18, 2017) at ¶ 63.

On April 4, 2017, in Case No. 17-910-GA-ACE, Ludlow filed an application to operate as a natural gas company and public utility in the state of Ohio. The application notes that Ludlow was recently formed with the intention that it obtain authority from the Commission to provide natural gas distribution service to ORNG's customers, until such time as ORNG's system can be transferred to a qualified successor.

On April 14, 2017, a stipulation and recommendation (stipulation) was filed by ORNG, Ludlow, and Staff. The stipulation provided that both ORNG and Ludlow (together, Ludlow) are subject to the Commission's jurisdiction as public utilities as defined in R.C. 4905.02. The parties agreed that Ludlow will become ORNG's successor in interest when ORNG ceased its operations on April 17, 2017, and that, by May 15, 2017, ORNG would transfer all of its assets to Ludlow. In the stipulation, the parties also agreed that, by July 15, 2017, Ludlow would sell or transfer its assets and operations to a person or entity approved by the Commission. The parties agreed that such person or entity will have no affiliation with Richard Osborne, ORNG, Ludlow, or any other entity affiliated with Richard Osborne.

By Finding and Order dated April 17, 2017, the Commission approved the stipulation. Subsequently, the Commission granted Ludlow two extensions of the stipulation's July 15, 2017 deadline to sell or transfer all of Ludlow's assets to an unaffiliated third party. A third request to extend the current deadline of August 14, 2017, to October 2, 2017, was denied by the attorney examiner on September 20, 2017.

#### APPLICATION DESCRIPTION

Pursuant to R.C. 4905.05 and 4905.06 and the Commission's April 17, 2017 Finding and Order in the *Investigation Case*, Ludlow, Knox, and Utility Pipeline, Ltd. (UPL) (together, Applicants) filed a joint application for transfer of assets and substitution of service on August 15, 2017. The Applicants request that the Commission: (1) authorize the transfer of all of Ludlow's regulated assets and its natural gas service customer accounts to UPL; and (2) authorize UPL, to the extent Commission approval is required, to assign the system and the customers to Knox, which will be the natural gas distribution company that provides service to the customers.

The Applicants state that Ludlow is a public utility and natural gas company as defined by R.C. 4905.02 and 4905.03, respectively, and is, therefore, subject to the Commission's

jurisdiction. Knox is a natural gas company as defined in R.C. 4905.03 and a cooperative association under R.C. 4905.02(A) (2). The Commission has jurisdiction over Knox with respect to gas pipeline safety matters, pursuant to R.C. 4905.90 through 4905.96. Knox currently serves approximately 20,000 owner-customers in Ohio and Pennsylvania. UPL, as a privately-owned corporation involved in pipeline construction and utility support services in Ohio and surrounding states, provides natural gas service to approximately 50,000 customers through several natural gas cooperative associations that it manages and operates, including Knox's natural gas distribution system since 1999.

The Applicants assert that approval of the application in this case will fulfill the requirements of the Commission's April 17, 2017 Finding and Order in the *Investigation Case*, because the application seeks authority to transfer all of Ludlow's assets to UPL and then to Knox, neither of which has any affiliation with Richard Osborne, ORNG, or Ludlow.

The Applicants state that, per the terms of a purchase agreement between Ludlow and UPL, Ludlow will transfer the system and customer accounts to UPL upon the Commission's approval of the application, while UPL will then immediately assign the system and the customers to Knox. UPL will operate and manage the system for Knox pursuant to an assignment agreement between UPL and Knox. The Applicants also state that there will be no interruption in service to customers during the transfer of assets, particularly given that UPL is currently managing and operating the system pursuant to an agreement between Ludlow and UPL.

The Applicants affirm that, upon consummation of the transaction, UPL and Knox will provide adequate, reliable, and uninterrupted gas service to the acquired customers and that Ludlow will cease to provide any services to the customers. Further, the customers transferred from Ludlow to Knox will be converted to cooperative members at no transfer cost, with their natural gas rates to be set by the board of the cooperative association.

The Applicants conclude that UPL and Knox have the operational, financial, and managerial abilities to assure the provision of uninterrupted and adequate service to the customers. The Applicants request that the Commission find that the proposed transaction is just, reasonable, and in the public interest; approve the transfer of customers and assets from Ludlow to UPL and, to the extent Commission approval is required, the assignment of the system and the customers from UPL to Knox; find that Knox, as managed by UPL, will exclusively provide all retail natural gas services to the customers; find that UPL and Knox have the technical, financial, and managerial abilities to ensure the provision of

uninterrupted and adequate service to the customers; and direct Ludlow, UPL, and Knox to notify all customers of the transaction within 30 days of the Commission's order.

### REVIEW AND ANALYSIS

In reviewing the application, Staff from the Rates and Analysis Department also reviewed the asset transfer and purchase agreement, which was filed under seal on September 27, 2017, as supplemented on September 28, 2017. The agreement outlines the commitments and obligations of Ludlow and UPL both before and after the closing. The purchase price of the system is a result of negotiations between knowledgeable parties and, as such, Staff does not believe it to be unreasonable. Staff bases its assessment on the understanding from discussions with the Applicants that no recovery of any additional transfer or transactional costs outside of the reviewed agreement accompanies the proposed transfer.

Staff from the Service Monitoring and Enforcement Department also reviewed whether the proposed transaction involves any abandonment or harm to customers as a result of the application. After its review of the application, Staff determined that customers will continue to be served by UPL/Knox and that no facilities will be abandoned.

Staff believes that UPL/Knox who have been operating in Ohio for two decades have the technical, financial, and managerial abilities to ensure the provision of uninterrupted and adequate service to the affected customers. The Commission has previously authorized the transfer of assets and customers from other public utilities to Knox. *See, e.g., In re Knox Energy Cooperative Association*, Case No. 07-633-GA-ATR, Entry (June 27, 2007); *In re Knox Energy Cooperative Association*, Case No. 04-761-GA-ATR, Finding and Order (June 30, 2004).

Staff, therefore, finds that both the proposed transfer of service and sale of assets from Ludlow to UPL and Knox are reasonable and in the public interest.

### RECOMMENDATION

Upon review, Staff recommends the Commission approve the application. The proposed transfer of assets and customers from Ludlow to UPL and Knox appears to comply with the terms of the stipulation approved by the Commission in the *Investigation Case*. Staff finds that the proposed transaction is reasonable and in the best interest of the affected customers.

Staff also recommends that UPL and Knox notify all customers of the transaction and their rights and responsibilities as members of Knox.

**This foregoing document was electronically filed with the Public Utilities**

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Summary: Staff Report Filed Staff Review and Recommendation Concerning  
Transfer of Assets and Customers from Ludlow Natural Gas Company, LLC  
To The Knox Energy Cooperative Association  
electronically filed by Mr. Patrick J Donlon on behalf of Staff of the PUCO