

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Joint Application of	)	
Utility Pipeline, LTD., Knox Energy	)	Case No. 21-814-GA-ATR
Cooperative Association. Inc. and the	)	
East Ohio Gas Company d/b/a Dominion	)	
Energy Ohio Gas Company for	)	
Expediated Approval to Substitute	)	
Natural Gas Service and Transfer Assets	)	
and Customers	)	

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**STAFF COMMENTS  
SUBMITTED ON BEHALF OF  
THE STAFF OF THE PUBLIC UTILITIES COMMISSION OF OHIO**

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Respectfully submitted,

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**On Behalf of the Staff of  
The Public Utilities Commission of Ohio**

**October 19, 2022**

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**I. INTRODUCTION**

On July 22, 2021, Utility Pipeline., LTD. (UPL), Knox Energy Cooperative Association, Inc. (Knox), and the East Ohio Gas Company D/B/A Dominion Energy Ohio (Dominion) collectively the “Joint Applicants” filed in Case No. 21-814-GA-ATR for expedited approval to substitute natural gas service and to transfer assets and customers.

The application is a request to transfer the distribution assets and customers of the Powhatan Point System (Powhatan) located in Belmont County, Ohio from Dominion to Knox. UPL will be managing and operating the distribution system on behalf of Knox. The Powhatan Point System has 699 active customers of which 361 shop for their commodity service with a Certified Retail Natural Gas (CRNG) supplier.

On October 3, 2022 Joint Applicants filed a supplement to the application as a result of discussions between parties and Staff.

## **II. STAFF REVIEW**

Staff conducted a review of the application and the supplement. The review consisted of data requests from Knox and UPL. Staff's review of the transfer as reasonable and in the public interest, also included whether the transaction will result in uninterrupted and adequate service and that the transferee possesses the requisite managerial, technical, and financial ability to operate the system and serve the customers. In addition, Staff participated in the Public information session In Powhatan Point with customers to solicit public input on the application and provide customers with information on the potential transfer.

### **A. Managerial Review**

Day-to-day management of the Powhatan System will be the responsibility of UPL through a management agreement with Knox. Knox does not have any employees. Knox does not retain consultants, attorneys, or auditors. According to the Joint Applicants, the Knox Board of Trustees makes decisions on rates, service matters, gas procurement, hedging, and the establishment of rules and regulations for its members. However, the Board of Trustees does not manage the day-to-day operations of the distribution system. Knox, as represented by President of the Board of Trustees, Renee McDaniel, a Certified Public Accountant who is not an unsophisticated partner in the relationship with UPL, grew from 400 apple valley natural gas distribution customers in

1998 to 21,000 customers today. Knox is admittedly relying on the managerial agreement with UPL for the day-to-day management of the distribution system.

UPL is a multi-state limited liability company founded in 1995 that provides natural gas distribution and operations services to natural gas utilities and cooperatives. UPL employs 156 full time employees managing over 2,400 miles of pipe in distribution systems. UPL has substantial experience managing distribution systems such as Pike Natural Gas Company and Eastern Natural Gas Company.

## **B. Technical Review**

The day-to-day technical operations of operating the distribution system will be the responsibility of UPL through a management agreement with Knox. Knox does not have any employees. Knox does not employ meter readers, field technicians, customer service representatives, billing personnel, or any other necessary employee to operate a gas distribution system. Knox has no capability within the cooperative to operate the distribution system. Like the lack of managerial capability, Knox does not possess the technical capability to provide distribution services and is admittedly relying on the service agreement with UPL for the day-to-day operation of the distribution system. In the event that UPL could no longer provide Knox services, Knox would need to engage a new operator.

UPL operates the natural gas distribution service for several utilities (Eastern Natural Gas Company and Pike Natural Gas Company) as well as several cooperatives (Knox, Village Energy Cooperative, and Madison Energy Cooperative) in Ohio. UPL

installs facilities and equipment, maintains the facilities and equipment, provides the meter reading, handles the billing, meets with regulators, provides customers service as well as all other aspects necessary for the operation of a distribution service. This includes interacting with pipelines and other natural gas entities whether it is just a farm tap or another local distribution company. UPL has substantial experience in the technical operations of distribution systems.

### **C. Financial Review**

The transfer of Powhatan to UPL and the subsequent assignment to Knox is the typical arrangement between UPL and energy cooperatives. The purchase of the Powhatan System requires UPL to provide the capital investment, which is recovered through an agreement with Knox. Likewise, the maintenance and operating expenses and future capital expenditures are financed by UPL and recovered through a management/service agreement. The proposed arrangement of UPL providing all the upfront and continued capital and recovering said capital through a management/service arrangement is a similar arrangement that exist now between UPL and the cooperatives for their distribution systems.

Knox provides no capital in the transaction between UPL and Dominion. Knox, unlike many energy cooperatives does not require members to contribute to the cooperative for capital costs. Knox members contribute no capital towards the cooperative other than a \$25 membership fee. Knox could not finance the transaction to purchase the Powhatan system without UPL.

#### **D. Arrangement**

The close arrangement between UPL and Knox is unusual. Knox is entirely dependent upon UPL for all aspects of managing, operating, and financing the cooperative's natural gas systems. Knox has no employees. Knox utilizes UPL for all services exclusively with no independent consultants, accountants, or attorneys. Knox members contribute no capital towards the cooperative other than a \$25 membership fee.

It is not unusual for third parties to be employed by energy companies for services such as billing, installations, or metering. It is, however, unusual to outsource everything to one entity. Despite this close arrangement, the assignment to Knox does appear to be a genuine transaction.

### **III. STAFF SUMMARY OF KNOX AND UPL CAPABILITIES**

#### **A. Managerial Capabilities**

Staff believes that UPL has the managerial capabilities to manage the Powhatan System adequately and without interruption. UPL has had extensive experience managing regulated local distribution systems as well as energy cooperatives.

Staff believes that Knox lacks the managerial capabilities to manage the Powhatan System without UPL.

#### **B. Technical Capabilities**

Staff believes that UPL has the technical capabilities to operate the Powhatan System adequately and without interruption. UPL employs technical staff in the operation

and expansion of the distribution systems that they operate. The employees of UPL would have the necessary technical capabilities to operate the Powhatan System.

Staff believes that Knox lacks the technical capabilities to manage the Powhatan System without UPL.

### **C. Financial Capabilities**

Staff believes that UPL has the financial capabilities to finance the acquisition and on-going capital needs and expenses necessary to operate the Powhatan System. UPL will provide the capital for acquisition of Powhatan System as well as the capital for repairs and expansion. The Joint Applicants have indicated that Knox through a management service agreement reimburses UPL for both the on-going costs as well as the acquisition costs of equipment and facilities.

Staff believes that Knox lacks the financial capabilities to finance the Powhatan System without UPL. Staff also believes that the use of assignment and service/management agreements for the complete acquisition and operation of a utility is counter to Staff's understanding of an energy cooperative. The members of Knox do not provide capital credits or shareholder dollars. Knox does not have employees to manage or operate their natural gas distribution system. The lack of a traditional capital credit does not provide Staff with comfort in the future financial capabilities of Knox in the event of a distribution system incident or at the end of its relationship with UPL.



#### **IV. STAFF REVIEW OF TRANSFER**

##### **A. Powhatan Point, Ohio**

Powhatan Point, Ohio is a small village in Belmont Count along the Ohio River. As of the 2010 Census, there were 710 households. The estimated median household income in 2019 was \$41,003 (Ohio median is \$58,642). The estimated median house value in 2019 was \$91,230 (Ohio median is \$157,200). The community also contains an elementary school. Powhatan Point has had a declining population since the 2000 census.

##### **B. Impact on Customers**

Customers of Powhatan will be impacted by a transfer from Dominion to Knox in two significant ways. The most obvious change for customers is the impact of being served by an energy cooperative instead of by a regulated public utility. The less obvious change would be the immediate financial impact to customers as Dominion closes their accounts.

As customers of a regulated public utility, Dominion customers enjoy a multitude of consumer protections, access to low-income assistance, and consumer choice options that Knox does not provide.

The Public Utilities Commission of Ohio (PUCO) provides customers of public utilities with regulation that is absent from cooperatives. The PUCO not only reviews and approves rates but provides customers with resources to resolve issues and concerns. The PUCO provides informal call center assistance, a forum for formal complaints, avenues to express individual opinions, and enforcement of administrative rules. As customers of a public utility, customers of Dominion are assured that disconnections, payment

arrangements, metering, installations, complaints, privacy rights, and deposits are based on the same standards as other public utility customers in Ohio and that their voices will be heard. The PUCO will continue to regulate the Powhatan System for Pipeline Safety as the agency has jurisdiction over pipeline safety whether the system is operated by a public utility or an energy cooperative.

As customers of an energy cooperative, prospective Knox customers will not be without protections. As members of a cooperative, the customers would be provided with avenues to express concerns regarding their service. The cooperative does not seek a profit or a rate of return as a public utility does. However, the cooperative employs UPL, a for profit company, for its operations. Many of the protections enjoyed in administrative rules are instead detailed through contract and charters for cooperative customers such as deposits and metering.

Another apparent advantage for Dominion customers today is access to low-income assistance programs and subjection to Commission Orders. The Percentage of Income Payment Plan Plus (PIPP) is a payment plan required by the Ohio Administrative Code for low-income customers. The requirement allows customers who are at or below 175% of the poverty level to pay five (5) percent of their income each month to maintain service and can obtain credits toward their arrearages if their payments are on-time and in-full, with the very poorest only required to pay a \$10.00 monthly payment. PIPP customers are also eligible for home weatherization assistance as well as utility assistance (Dominion Energy Share). In addition, the Commission has issued several Orders to protect Ohio's most vulnerable that only apply to public utilities such as the Special

Reconnect Order (FKA Winter Reconnect Order most recent Case No. 22-668-GE-UNC) and the Emergency COVID 19 Order (Case No. 20-591-AU-UNC). The Special Reconnect Order keeps the gas on or helps customers get reconnect each year during the coldest months. And the Emergency COVID 19 Order helped many Ohioans get through difficult times during the height of the pandemic.

As customers of an energy cooperative, prospective Knox customers would have access to Federal energy assistance like regulated public utilities. In fact, cooperative customers are eligible for HEAP payments for winter and summer crisis programs<sup>1</sup>. In addition, a cooperative may have greater flexibility in terms of payment assistance and disconnections than an investor-owned utility would who has to account to both shareholders and regulators.

Of the potential 699 Powhatan customers to be transferred, there are 12 PIPP customers, 2 Grad PIPP customers, 6 customers on company payment plans, 258 customers using budget billing, 187 customers in arrears with 48 more than 60 days past due, and 8 inactive/final customers with a balance. For a transfer to occur, the final accounting of customer accounts must be accomplished. Dominion's application expected to recover outstanding balances from customers through final billing, payment plans, or GRAD PIPP plans with all uncollected amounts recovered through their uncollectible rider. Dominion has altered the expectation of collection of any outstanding balances with the supplemental filing to the application and will be writing off

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<sup>1</sup> See <https://development.ohio.gov/wps/portal/gov/development/individual/energy-assistance/1-home-energy-assistance-program>.

outstanding debt and not seek recovery through ratepayers or collection actions. Dominion expects any deposits will be applied to final bills and thus returned to customers. UPL/Knox do not plan on requesting deposits for transferred customers. In addition, Dominion expects that all weatherization programing that has been initiated prior to the transfer will be completed.

The third difference for Powhatan customers between distribution service with Dominion and that of UPL/Knox is the presence of commodity choice. Currently, 361 customers are receiving their commodity under an energy choice or a monthly retail rate arrangement, 316 customers are receiving a standard choice offer (SCO) and 22 customers are receiving a Standard Service Offer (SSO). Thus, more than half of the customers in Powhatan shop for their natural gas service. Staff notes that Dominion customers have enjoyed the lowest commodity pricing of all CHOICE utilities in Ohio thanks to its proximity to shale discoveries and storage capabilities.

The Joint Applicants have provided little assurances to Staff that CRNG suppliers or their customers contractual interests were considered as part of the transfer. In response to Staff inquiry, Dominion assumes that in this proceeding, the Commission would prevent termination penalties as part of any CRNG contract as the customer would no longer be served by a natural gas company participating in a retail choice program. In addition, Dominion believes it is not obligated to reimburse the CRNG suppliers for lost revenues or profits as a result of the termination of contracts. Dominion has expressed that notice of the sale has been given to CRNG suppliers and none have expressed concerns. Likewise, no CRNG supplier has intervened in this current proceeding. Staff

also notes that during the information session on October 12, 2022, several customers voiced concerns with CHOICE and a preference for not having to shop and no customers expressed a concern with losing CHOICE.

### **C. Financial and Bill Impacts**

Customers initially will need to settle accounts with Dominion and start new accounts with Knox. The latter appears to Staff to be a simple matter of a membership application and a \$25 fee. Knox and UPL are experienced with processes and procedures for adding new members and thus Staff has little concern. Staff, however, does have concern for customers needing to finalize their accounts with Dominion particularly those with outstanding arears or those who are in a payment plan.

There are 263 Powhatan customers currently in some state of financial stress whether it is simply behind one month or in a payment plan. There are an additional 258 customers utilizing a budget plan to prevent monthly financial stress. For both of these groups of customers, the transfer from Dominion to Knox may create an immediate concern to their household finances. Staff believes that the supplemental application by limiting final bill collections and providing \$10,000 in bill assistance mitigates any potential financial stress from the transfer.

The transfer will also disrupt the contractual obligations of 361 customers who currently shop for their commodity. The bargain that both the CRNG suppliers and their customers reached in contract is assumed by Dominion to be voided upon transfer to Knox. Staff has concerns that with low fixed contracts, customers may be substantially

harmful as commodity pricing has been steeply trending higher during the preceding 12 months and is projected to continue. The joint applicants have attempted to isolate auctions bidders from loss by allowing auction bidders to continue to supply to Knox gas at standard service offer pricing until March 31, 2022. Although, Staff believes that some customers may be harmed, no customer has expressed their concern to Staff. Surprisingly Staff, customers during the information session expressed comfort in not shopping and relayed frustrations with Dominion's CHOICE program.

The cost of service and thus the monthly bills will also impact customers. An average Dominion residential customer using 5.04 Mcf per month currently would pay \$37.22 for distribution charges without taxes. The projected Knox monthly charge would be \$31.43 for distribution charges without taxes. The cost for the commodity (natural gas) between Dominion and Knox for each customer varies. Over half of Powhatan customers utilize a CRNG supplier making any individual or overall comparison impossible. However, the agreement to continue to provide natural gas to Knox at SSO/SCO pricing does provide customers with short term price stability through March 2022, assuming the pricing is passed directly to Powhatan System customers and not all Knox members. In addition, the loss of choice to contract for commodity supply for large consumers may have a significant impact that is not reflected in Staff's review. Knox is not without means to purchase reasonably priced natural gas with its 21,000 customers as a large aggregation.

#### **D. System Impacts**

Dominion's basis for selling the Powhatan System to Knox is that the customers are in an isolated, low growth portion of the Dominions overall system. Dominion expressed a desire to focus its interest on unserved or underserved areas elsewhere in its service area which are higher growth and lower cost. Dominion is a predominately Northeast Ohio Company with Belmont County at its southern edge. Although Knox is not geographically limited, nearly nineteen percent of its members reside within 40 miles of the Powhatan System, giving Knox a greater local presence than Dominion. Furthermore, UPL and Knox have an incentive to invest within their systems more freely than Dominion

Staff is not aware of any pipeline safety concerns with the Powhatan System. Staff does note that Dominion records have been inconsistent and that a new operator may have some work to do to retest lines to confirm that the operations are within the Maximum Allowable Operating Pressure of the system.

Although, Staff is not aware of any physical concerns to the state of the Powhatan System, Staff is aware that the system was installed in the 1960's. Natural Gas pipelines that are well maintained can have long life spans before needing replacement. However, 50 years is an average life span. Dominion could not readily provide Staff with a report of total expenditures, improvements or other expenses of capital investments based on a geographic location and thus the identified investment below is likely underinclusive. Dominion identified \$233,120 of investment in the Powhatan System since 2011. Dominion does note to Staff that the Powhatan System does not contain bare steel or

other target mainline recovered through the PIR Rider and that distribution rates and charges including the CEP rider and PIR riders generally do not vary based on the location of the customer or the specific level of investment relative to the customer's location.

Dominion customers currently are charged for two large infrastructure riders the PIR Cost Recovery Charge and the Capital Expenditure Program rider. The monthly charge is \$14.98 for the PIR and \$3.86 for the CEP for residential Dominion customers. Customers have been charged for the PIR since January 4, 2010 and the CEP since January 6, 2021. The 699 Powhatan System customers for 10 months in 2021 have already paid Dominion approximately \$131,000 for the PIR and CEP. These customers have been charged for the PIR for eleven years. For 2021, the PIR charge alone will total \$179.76 per customer.

## **V. STAFF REVIEW OF PUBLIC INTEREST**

### **A. Public Interest**

The transfer of assets and customers is not an uncommon occurrence. The majority of these transfers have been a few customers at a time. In addition, these transfers are generally necessary because the current owner of the assets has come into some difficulty providing continual and adequate service or lacks the managerial, technical, and financial capability to operate a local distribution system. Dominion does not lack the managerial, technical, or financial capability to continue to provide service to



the Powhatan System. The transfer of 699 customers from Dominion to Knox is a business decision not driven by necessity.

Staff is concerned about selling assets and customers because the customers service area is of a higher cost to serve and lower in growth. Dominion is receiving a cash payment as consideration for the transfer.

Although Staff has concerns whether customers and their assets should be transferred solely based on a business decision and not on the basis of necessity. Staff does believe that the public interest is served by the application as supplemented. The supplement to the application provided customers with an information and question session that was held on October 12, 2022. Several members of the community participated with the primary concern of customers being the price and their frustration with the CHOICE program. In addition, the Joint applicants will be providing transferred customers with \$10,000 in bill assistance should customers find themselves behind on their bills. Dominion committed to the cancelation of any owed balances, and a transfer of any owed credits as well as to writing of any PIPP balances.

Staff would recommend that Dominion also refund PIPP credits to the extent that customers have a credit. Dominion recently requested a waiver of rule 4901:1-18-14(B) to refund some of these credits to customers. Staff believes that since the customers will be terminated from the PIPP program as a result of the transfer that these credits should also be provided to customers. In addition, Staff would also recommend that ratepayers not be responsible for any write off associated with the transfer.

## **B. Summary of Staff Concerns**

The 699 customers of Powhatan currently served are in no danger of losing their natural gas service. The proposed transfer from Dominion to Knox is a business decision in which Dominion will receive a cash windfall for the transfer. Typically, in cases of transfer the incumbent utility (who finds itself unable to serve) is required to pay the transferee not the other way around. Additional concerns of Staff include: customer final accounting issues with Dominion, regulatory treatment of transfer on Dominion's regulatory books, customer's loss of access to low-income assistance programs and plans, loss of CHOICE contractual bargains made today and forgone in the future, loss of consumer protections enforced by the PUCO, loss of PUCO ratemaking, and the loss of socialization of future repairs and replacements with Dominion's large customer base when it is Powhatan's turn to be invested in.

The transfer from Dominion to Knox does present benefits to the customers of Powhatan. The initial distribution rates appear to be lower. Knox and UPL are incentivized to invest and maintain their distribution systems. The joint applicants, however, did not provide any estimate or plans to invest in the Powhatan system. Knox has nineteen percent of its customers within 40 miles of Powhatan Point, Ohio. Cooperative customers are also not without clear terms and conditions of service and access to HEAP assistance.

## **VI. STAFF RECOMMENDATION**

### **A. Recommendation**

Staff believes that Knox, with the service agreement of UPL, does meet the managerial, financial, and technical criteria to continue to provide uninterrupted and adequate natural gas services to the Powhatan customers. Staff believes that the Application as supplemented on October 3, 2022, is in the public interest. However, Staff recommends that the Commission clarify that PIPP customer with credits receive those credits, and that Dominion does not recover any write offs from ratepayers.

Respectfully submitted,

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Ohio Attorney General

**John H. Jones**  
Section Chief

*/s/ Werner L. Margard*  

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**On Behalf of the Staff of the  
Public Utilities Commission of Ohio**

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the **Staff Comments** on behalf of the Staff of the Public Utilities Commission of Ohio, has been served upon the below-named counsel via electronic mail, this 19<sup>th</sup> day of October, 2022.

*/s/ Werner L. Margard*

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on behalf of PUCO