

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, FEBRUARY 23, 2016

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JOINT PETITION OF

THE SOUTHERN COMPANY,
AGL RESOURCES INC., and
VIRGINIA NATURAL GAS, INC.

CASE NO. PUE-2015-00113

For approval of an acquisition of control
of a public utility pursuant to Chapter 5
of Title 56 of the Code of Virginia

FINAL ORDER

On October 26, 2015, The Southern Company ("Southern"), AGL Resources Inc. ("AGLR"), and Virginia Natural Gas, Inc. ("VNG") (collectively, "Petitioners"), filed with the State Corporation Commission ("Commission") a joint petition seeking Commission approval, pursuant to the Utility Transfers Act, Chapter 5 of Title 56 of the Code of Virginia ("Code"),¹ of the indirect acquisition of control over VNG by Southern ("Joint Petition").² According to the Petitioners, subsequent to obtaining all regulatory approvals, AGLR will merge with AMS Corp., a wholly owned subsidiary of Southern ("Merger").³ The Petitioners further stated that VNG will remain a direct subsidiary of AGLR and thereby become an indirect, wholly owned subsidiary of Southern upon completion of the Merger.⁴

On November 12, 2015, the Commission issued an Order for Notice and Comment that, among other things, directed the Petitioners to provide notice to the public of the Joint Petition;

¹ Va. Code § 56-88 *et seq.*

² Joint Petition at 1.

³ *Id.* at 1, 6-7.

⁴ *Id.* at 7.

provided an opportunity for interested persons to file a notice of participation in this proceeding and file comments or request a hearing on the Joint Petition; and directed the Staff of the Commission ("Staff") to conduct an investigation of the Joint Petition and present its findings and recommendations in a report ("Staff Report").

On December 18, 2015, the Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel") filed a notice of participation. No other parties have maintained their participation in this proceeding,⁵ and no comments on the Joint Petition have been filed.

The Staff filed a Staff Report on the Joint Petition on February 2, 2016, which documented a number of representations made by the Petitioners in the Joint Petition and in response to the Staff's investigation.⁶ Based upon the Petitioners' representations, the Staff concluded that adequate service to the public at just and reasonable rates would not be impaired or jeopardized by the granting of approval of the proposed Merger and, therefore, recommended that the Commission approve the Merger subject to certain requirements listed in the Appendix to the Staff Report.⁷

On February 17, 2016, the Petitioners and Staff filed a Joint Motion for Leave to Present Stipulation and Recommendation ("Joint Motion"), attached to which was a Stipulation and Recommendation ("Stipulation") as a proposed resolution of all key issues with respect to the

⁵ On December 28, 2015, Direct Energy Business Marketing, LLC, and Gateway Energy Services Corporation filed a motion withdrawing their December 18, 2015 notice of participation and request for hearing, which the Commission granted by Order dated December 29, 2015. By Order dated February 8, 2016, the Commission also granted the February 3, 2016 motion of the International Brotherhood of Electrical Workers Local 50 ("IBEW Local 50") to withdraw their February 1, 2016 motion to accept notice of participation and IBEW Local 50's notice of participation.

⁶ See, e.g., Staff Report at 4-5, 15-17, 21, 27-28, 31-33, 35-37, 39.

⁷ See *id.* at 17, 28-29, 39-43, 44-47.

proposed requirements listed in the Staff Report.⁸ In the Joint Motion, the Petitioners and the Staff asserted that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by approval of the Merger, contingent upon the recommended requirements identified in the Stipulation, consistent with § 56-90 of the Code, and therefore urged the Commission to adopt the Stipulation and approve the Merger.⁹

The only issue with respect to the requirements that was not resolved by the Stipulation was related to the timing of the sunset provision for a proposed requirement on staffing levels.¹⁰ The proposed requirement provides in part that the Petitioners "maintain, at a minimum, 215 employee positions that, in whole or in part, pertain to the requirements of the Commission's pipeline safety standards, as well as the Underground Utility Damage Prevention Act (§ 56-265.14 *et seq.* of the Code)...."¹¹ The Petitioners and the Staff asked the Commission to determine whether the requirement should be in place for five years as proposed by the Staff or for three years as proposed by the Petitioners.¹²

Also filed on February 17, 2016, was the Petitioners' Response to the Staff Report ("Petitioners' Response"), in which the Petitioners asserted that the Merger should be approved because it will not impair or jeopardize VNG's provision of adequate service to its customers at just and reasonable rates, consistent with the statutory standard set forth in § 56-90 of the Code.¹³ The Petitioners reiterated that the Merger will be seamless for VNG's customers and notable

⁸ Joint Motion at 2-3.

⁹ *Id.* at 3.

¹⁰ *Id.*; Stipulation at 2, 4-5.

¹¹ Stipulation at 4-5.

¹² *See id.* at 2,4-5; Joint Motion at 3; Staff Report at 31-32; Petitioner's Response at 7-9.

¹³ Petitioners' Response at 3.

mostly for what it will not change for VNG.¹⁴ Furthermore, the Petitioners emphasized that Virginia customers will continue to receive service from VNG in the same manner and pursuant to the same Commission-approved rates, terms and conditions upon which they now receive service, as borne out by the representations and voluntary commitments offered by the Petitioners.¹⁵

As to the only question left unresolved by the Stipulation, the Petitioners asserted that beyond the three years to which they have committed they, and VNG in particular, should be allowed the flexibility to manage potential changes in the work force due to the needs of the business, employee performance, the desires of individual employees, or other unforeseen circumstances.¹⁶ The Petitioners further argued that it is conceivable that lower maintenance requirements from system modernization, improved technology, or other factors could influence these employment levels over time, and that requiring VNG to maintain those employees for a period of five years could limit VNG's flexibility to effectively and efficiently manage its cost of service for the benefit of customers without any clear incremental benefit in terms of safety.¹⁷

On February 19, 2016, Consumer Counsel filed a response to the Joint Motion stating that with the conditions set out in the Stipulation, it does not appear that approval of the Joint Petition and Stipulation will impair or jeopardize VNG's ability to provide adequate service to the public at just and reasonable rates. Accordingly, Consumer Counsel stated that it does not object to the Joint Motion and Stipulation.

¹⁴ *Id.*

¹⁵ *Id.* at 3-4.

¹⁶ *Id.* at 8.

¹⁷ *Id.*

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows. Section 56-90 of the Code provides:

If and when the Commission, with or without hearing, shall be satisfied that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the prayer of the petition, the Commission shall make such order in the premises as it may deem proper and the circumstances require, and thereupon it shall be lawful to do the things provided for in such order....

The Petitioners have made several representations in support of the Joint Petition, both in their filings in this proceeding and in response to the Staff's investigation, as documented in the Staff Report. For example, the Petitioners represent that they "will not seek cost recovery of any portion of the acquisition premium, acquisition adjustment, fair value write-up, or goodwill/intangible related to the proposed merger through rates charged to Virginia jurisdictional customers."¹⁸ We rely upon the Petitioners' representations to find that: (i) the Stipulation should be accepted; (ii) that we are satisfied that adequate service at just and reasonable rates will not be impaired or jeopardized by the Merger so long as the requirements as set out in the Stipulation are ordered as a condition of approval; and (iii) that the Merger should be approved subject to the requirements set forth in the Appendix to this Final Order.

The Stipulation presented by the Petitioners and the Staff asked the Commission to determine whether a requirement on staffing levels should be in effect for three years or five years.¹⁹ Specifically, in Requirement (13) of the Stipulation, "Petitioners agree to maintain, at a minimum, 215 employee positions ..."²⁰ It is our understanding from the record herein that 205

¹⁸ Staff Report at 7-8 (quoting Response to Staff Interrogatory No. 04-049).

¹⁹ See Stipulation at 2, 4-5; Joint Motion at 3; Staff Report at 31-32; Petitioner's Response at 7-9.

²⁰ Stipulation at 4-5.

of the 215 positions referenced in Requirement (13) will be VNG positions.²¹ We find that these staffing levels should be maintained for five years. If in the future the Petitioners find that advancements in system modernization, improved technology, or other factors would affect the Petitioners' ability to effectively and efficiently manage its cost of service for the benefit of customers, and thereby render the requirement unreasonable, then the Petitioners may file for relief at that time.

Accordingly, IT IS ORDERED THAT:

(1) The Joint Motion filed by the Petitioners and the Staff is granted, and the Stipulation attached thereto hereby is adopted.

(2) The Petitioners shall maintain, at a minimum, 215 employee positions that, in whole or in part, pertain to the requirements of the Commission's pipeline safety standards, as well as the Underground Utility Damage Prevention Act (§ 56-265.14 *et seq.* of the Code) for a period of five years after the approval of this Merger by the Commission and shall not degrade the competence level of the employee workforce as a result of the Merger.

(3) Pursuant to § 56-88.1 and § 56-90 of the Code, the proposed Merger as described in the Joint Petition hereby is approved subject to the requirements set forth in the Appendix to this Final Order.

(4) There being nothing further to come before the Commission, this case is dismissed from the Commission's active docket, and the papers filed herein shall be placed in the file for ended causes.

²¹ See Staff Report Part E at 81.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:
Stephen D. Rosenthal, Esquire, Troutman Sanders LLP, 1001 Haxall Point, Richmond, Virginia 23219; Christopher H. Demko, Senior Attorney, The Southern Company, 30 Ivan Allen Jr. Boulevard, Atlanta, Georgia 30308; Erica L. McGill, Esquire, AGL Resources Inc., Ten Peachtree Place, Atlanta, Georgia 30309; Joseph K. Reid, III, Esquire, and Jennifer D. Valaika, Esquire, McGuireWoods LLP, Gateway Plaza, 800 East Canal Street, Richmond, Virginia 23219; and C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219. A copy also shall be delivered to the Commission's Office of General Counsel and the Divisions of Energy Regulation and Utility Accounting and Finance.

APPENDIX

Accounting Requirements

- (1) The Commission's approval shall have no ratemaking implications. In particular, approval shall neither guarantee nor preclude the recovery of any costs directly or indirectly related to the Merger, which may be addressed in a future rate proceeding.
- (2) VNG shall file a Report of Action within thirty (30) days after the first SEC filing that presents the Merger financial results which have been reviewed by the Petitioners' auditors. The Report of Action shall include the closing date of the Merger Transaction,²² the actual total sale price, and the actual accounting entries recorded in Southern's, AGLR's and VNG's books to reflect the Merger. Such entries shall include: (a) All Closing Cost²³ accounting entries for the three Petitioners; (b) All Merger-related fair value, goodwill, and/or acquisition premium accounting entries for the three Petitioners; (c) All Merger-related current and deferred tax accounting entries for the three Petitioners; and (d) All Merger-related debt/equity financing accounting entries for the three Petitioners; by Petitioner, date, account number, account title, and amount. In addition, any VNG accounting entries shall be in accordance with the Uniform System of Accounts for natural gas local distribution companies, which includes booking any difference between the purchase price and the net book value of VNG's assets as an acquisition adjustment to Account 114.
- (3) In addition to providing the initial Merger accounting entries in the Report of Action, the Petitioners shall be required to track all changes to the booked accounts or amortization periods for the original booked Merger amounts as reported in the Report of Action referred to in Requirement (2) above as they are expensed, depreciated, amortized, written down, etc., and provide any such changes and an explanation for any such changes annually in VNG's Annual Information Filing ("AIF") or base rate case application filed with the Commission.
- (4) The Director of Utility Accounting and Finance shall be notified of Southern's tax election for the proposed Merger if and when it becomes effective.
- (5) VNG shall file for Chapter 4 approval of a new Southern consolidated tax sharing agreement that includes AGLR and its affiliates, including VNG, with the Commission within 120 days of the Merger closing date.

²² See Staff Report at 2-3.

²³ See *id.* at 8-9.

- (6) VNG shall file and obtain Chapter 3 and or 4 approval prior to entering into any new affiliate or financing arrangements resulting from the proposed Merger.
- (7) VNG shall be required to retain title, ownership and management of all Gas Contracts²⁴ necessary to ensure the provision of reliable gas service at the least cost possible to Virginia customers. Currently-approved Gas Contract management affiliate arrangements through the Sequent AMAA & GPSA shall remain in place until further Commission action. VNG shall continue to keep the Commission informed of its gas supply objectives, plans, and actions through its quarterly AMAA/GPSA meetings with Staff.
- (8) VNG shall file annually with its AIF or rate case application a Capital Expenditure Summary Report, using the format provided in Attachment A to the Stipulation, that compares budgeted to actual capital expenditures, for a period of five years after the approval of this Merger by the Commission.
- (9) The Petitioners are directed that:
 - (a) The quality of service in VNG's service territory shall not deteriorate due to a lack of maintenance or capital investment;
 - (b) The quality of service in VNG's service territory shall not deteriorate due to a reduction in the number of employees providing services; and
 - (c) Southern, AGLR, and VNG shall maintain a high degree of cooperation with the Commission Staff and shall take all necessary action to ensure VNG's timely response to Staff inquiries with regard to its provision of natural gas distribution service in Virginia.

Financial Requirements

- (10) Any consolidated AGLR capital structure presented in any VNG AIF or base rate application shall remove amounts attributable to Southern-AGLR merger-related costs, such as any acquisition premium, goodwill amounts and other items the Petitioners have agreed would not be borne by VNG customers. VNG may continue to present a consolidated AGLR capital structure both including and excluding Nicor Gas Company in such filings.
- (11) Staff shall receive at least thirty (30) days' advance notification prior to any dividend payment by VNG, and all other requirements contained in the Order Granting Authority in Case No. PUE-2015-00120 remain in effect.
- (12) Petitioners shall notify Staff of any credit rating downgrade of AGLR or AGL Capital Corporation within thirty days of its occurrence, provide Staff with an

²⁴ See *id.* at 14.

explanation of the reasons for such downgrade along with copies of any associated rating agency reports, and describe any measures and plans to restore such credit ratings.

Safety Requirements

- (13) The Petitioners shall maintain, at a minimum, 215 employee positions that, in whole or in part, pertain to the requirements of the Commission's pipeline safety standards, as well as the Underground Utility Damage Prevention Act (§ 56-265.14 *et seq.* of the Code) for a period of five years after the approval of this Merger by the Commission and shall not degrade the competence level of the employee workforce as a result of the Merger.
- (14) VNG shall maintain, at a minimum, the current number of critical valves (409 valves) for its existing system. The number of critical valves may change based on the future configuration of VNG's system. VNG shall continue to follow its Operations Procedure Manual ("OPM") relative to the designation and inspection of critical valves on its system. For a period of five years after this Merger is approved by the Commission, VNG shall submit an annual report to the Commission's Division of Utility and Railroad Safety ("Division") by April 1 of each calendar year documenting the number of critical valves on VNG's system as of the previous calendar year end and providing an explanation for any critical valves on VNG's system which were removed during the preceding calendar year.
- (15) VNG shall continue to qualify its covered employees and contract employees in accordance with the Virginia Enhanced Operator Qualification Program ("Enhanced OQ Program") after the Merger. In addition, the Company shall revise its OPM and Emergency Plan procedures to conform to the Enhanced OQ Program.
- (16) VNG shall continue to take reasonable and prudent actions to improve the effectiveness of the Company's damage prevention program.
- (17) VNG shall continue to track the time from receiving the notice of unintentional releases of gas ("First Notification"), and "First Arrival" until testing verifies that no immediate hazard exists ("Make Safe"). VNG shall provide an annual report to the Division no later than April 1 of each calendar year containing the previous year's annual average time from First Notification to First Arrival, as compared to the previous three-year composite average. This reporting requirement shall continue for a period of five years after the Merger is approved by the Commission.
- (18) VNG shall continue its voluntary commitment to develop and implement a pipeline safety management system in compliance with the American Petroleum Institute Recommended Practice ("API RP") 1173. VNG shall submit to the Division both its completed gap analysis and its assessment of the Company's

"safety culture" within one year from the date of the approval of this Merger by the Commission.

- (19) VNG shall provide the Division an annual report no later than April 1 of each calendar year on the number of field hours spent by VNG employees on operations and maintenance activities as required by 49 C.F.R. Parts 191, 192 and 199, and on the contractor costs by activity in the format provided in the Petitioners' attachment in response to Staff Set 3-38, which is included on pages 51-52 of Part E of the Staff Report hereto. This reporting requirement shall continue for five years after the Merger is approved by the Commission.
- (20) VNG shall continue to comply with safety record retention requirements under state and federal law following approval of the Merger and shall make any such records available to the Division promptly when requested.
- (21) VNG shall submit notices of construction, which are accurate when submitted, in accordance with the requirements of the Commission Order in Case No. URS-2006-00581. VNG shall continue to submit notices, which are accurate when submitted, of Large Construction Projects to the Division for projects that exceed \$100,000 in cost and submit them no less than 10 days before the estimated start date of the project. VNG shall continue to make reasonable efforts to inform the Division of changes in daily construction schedules.