

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION

Nashville, Tennessee

December 13, 1995

**IN RE: THE JOINT PETITION OF HARDIN COUNTY GAS COMPANY AND
COUNCE NATURAL GAS CORP. FOR TRANSFER OF A
CERTIFICATE OF CONVENIENCE AND NECESSITY TO OPERATE
A NATURAL GAS DISTRIBUTING COMPANY IN HARDIN COUNTY,
TENNESSEE FROM HARDIN COUNTY GAS COMPANY TO
COUNCE NATURAL GAS CORP.**

Docket No. 95-03379

INITIAL ORDER

This matter is before the Tennessee Public Service Commission upon the Joint Petition of Hardin County Gas Company and Counce Natural Gas Corp. for transfer of a Certificate of Convenience and Necessity to operate a natural gas distributing company in Hardin County, Tennessee, from Hardin County Gas Company to Counce Natural Gas Corp.

This matter was heard December 6, 1995, in Nashville, Tennessee, before Ralph B. Christian, II, Administrative Judge, at which time the following appearances were entered:

APPEARANCES:

JOHN KNOX WALKUP, Attorney at Law, P.O. Box 198888, Nashville, Tennessee 37219-8888, appearing on behalf of Petitioner Hardin County Gas Company.

DAVID W. YATES, Associate Consumer Advocate, 1504 Parkway Towers, 404 James Robertson Parkway, Nashville, Tennessee 37243-0500, appearing on behalf of the Consumer Advocate Division, Office of the Attorney General.

PETITIONERS

Hardin County Gas Company is a Tennessee corporation. It holds a certificate of convenience and necessity issued by the Public Service Commission in its Order dated July 8, 1960, authorizing it to operate as a natural gas distributing company within that part of Hardin County, Tennessee, known as the Counce-Pickwick area.

Counce Natural Gas Corp. is a Tennessee corporation organized August 22, 1995, for the purpose of acquiring the operating authority of Hardin County Gas Company and providing natural gas service in the territory covered by the certificate of convenience and necessity heretofore issued to Hardin County Gas Company, subject to the regulatory authority of the Tennessee Public Service Commission.

PETITION

Hardin County Gas Company has entered into an Asset, Purchase and Sales Agreement with Counce Natural Gas Corp. pursuant to the terms of which certain of the assets of Hardin County Gas Company are to be transferred to Counce Natural Gas Corp., including:

1. Seller's natural gas distribution system, and all of Seller's properties and assets associated therewith, including, without limitation, all main lines, service lines, odorizers, regulators, valves and meters, together with all of the other properties, personal and mixed, tangible and intangible, forming a part of or used in connection with the operation of the said natural gas distribution system (the "System") (see Exhibit "A" of Exhibit 2 of the Joint Petition for a more detailed description of the System's location);

2. All franchises, permits, privileges, immunities and licenses related thereto, to the extent such transfer is permitted by law or regulation;
3. All easements, rights-of-way, crossing agreements, and interests in properties listed in Exhibit "B" of Exhibit 2 of the Joint Petition);
4. Except as set forth in subparagraph (b) of this Paragraph 1, all of Seller's right, title, and interest in and to all contracts listed in Exhibit "C" of Exhibit 2 of the Joint Petition, which shall include all supply, transportation, and sales contracts (collectively, the "Contracts"; or individually, a "Contract");
5. Goodwill; and
6. The right to provide service to customers of Seller.

Under that Agreement, however, Hardin County Gas Company retains the following assets:

1. Seller's actual gas in storage;
2. Seller's firm storage contract with Tennessee Gas Pipeline (FS-PA #1994);
3. All cash on hand, or bank accounts of Seller;
4. All trade names of Seller, including "Hardin County Gas Company";
5. All accounts receivable owing to Seller as of the date of closing (the "Closing Date");
6. All deferred charges for take-or-pay and purchased gas adjustment accounts existing as of the Closing Date;
7. All rights to refunds including those refund rights under the Contracts, applicable to all periods prior to Closing;
8. Any prepaid expenses, including but not limited to insurance and taxes; and
9. All of Seller's minute books, stock books, books and records, related workpapers and correspondence. Buyer shall have the right to copy certain of Seller's books and records relating to

operating and maintaining the System and customer account records.

The plant of Hardin County Gas Company was designed and built to be capable of service to a large industrial customer; but that customer is no longer served by Hardin County Gas Company. If the operation is to be financially feasible, and if the ratepayers are to continue to receive adequate service at just and reasonable rates, the value of the plant for rate-base purposes must be reduced. Hardin County Gas Company is, therefore, seeking the Public Service Commission's approval of the transfer to Counce Natural Gas Corp. of the above assets at the purchase price to be paid by Counce Natural Gas Corp. of Sixty-Nine Thousand Dollars (\$69,000.00). The write-down of these asset adjustments will be shown through an acquisition adjustment as shown in a document placed in the Commission's file. The approval of this transfer will make the continued operation of the facilities financially feasible at just and reasonable rates to the ratepayers, thereby benefiting the ratepayers.

REVISED PROPOSAL PRESENTED AT THE HEARING

At the hearing on December 6, 1995, Donald R. Whittington, Vice President, Customer Services and Regulatory Affairs of Alabama-Tennessee Natural Gas Company, P.O. Box 918, Florence, Alabama 35631, testified on behalf of the Petitioners. Mr. Whittington presented his prefiled testimony with attachments, setting forth the terms of the proposed transfer from Hardin County Gas Company to Counce Natural Gas Corp. As a supplement to his testimony and a revision of the Joint Petition previously filed in this matter, Mr. Whittington explained the revised terms of the

proposal which had been developed as a result of discussions with the Consumer Advocate. Those terms are set forth in a Stipulation attached hereto as Exhibit A and made a part hereof. In summary, the revised proposal, memorialized by the Stipulation, provides that refunds, net of take-or-pay obligations, estimated to be approximately \$16,000, will be provided to the tariffed, non-contract, customers of Hardin County Gas Company. The refunds, which shall not be less than \$16,000 in total, are subject to audit by the Tennessee Public Service Commission or its successor. Hardin County Gas Company expressly consents to the jurisdiction of the Commission or its successor, solely for the purposes of that audit for a period of six months after the date that Petitioner files the actual refund calculation. Furthermore, the purchaser, Counce Natural Gas Corp., agrees to refrain from filing any proposed rate increases for a period of six months and to also refrain from implementing any price increase for the affected customers for a period of at least one year from the time of the effective date of the transfer, other than increases allowed under the Purchased Gas Adjustment Rules.

FINDINGS OF FACT AND CONCLUSION OF LAW

T.C.A. § 65-4-113 provides authority for a public utility to transfer all or part of its authority to provide utility service to another entity after obtaining approval of the Public Service Commission. T.C.A. § 65-4-113(b) provides that the "Commission shall take into consideration all relevant factors, including, but not limited to, the suitability, financial responsibility, and capability of the proposed transferee to perform efficiently

the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. The Commission shall approve the transfer after consideration of all relevant factors and upon finding that such transfer furthers the public interest."

Counce Natural Gas Corp. has the suitability and capability to perform efficiently the utility services to be transferred. The overall responsibility for the operations of the corporation will be in Evan E. Tumlinson of West Point, Mississippi, President and CEO of Counce Natural Gas Corp. Mr. Tumlinson is an engineer and has had broad experience as a consulting engineer with respect to the planning, feasibility, and construction of gas transmission and distribution systems. The day-to-day manager of the operations will be Mrs. Lorraine Horton, who has been the manager of Burnsville Gas Company, an affiliated company in Burnsville, Mississippi since 1988; and who is familiar with the management of natural gas distribution companies. Additionally, the Vice President of Counce Natural Gas Corp. will be Mike Horton of Mantachie, Mississippi, who has also had broad experience in the natural gas industry; and William M. Tidwell of Boonville, Mississippi, an engineer registered in Tennessee and Mississippi, who has had broad experience in the construction of natural gas systems.

Counce Natural Gas Corp. has the financial responsibility to perform efficiently the utility services to be transferred. It is a subsidiary of Tumlinson Engineering, Inc. Tumlinson Engineering, Inc. is committed to providing adequate financing for the acquisition of the system and its operation. Tumlinson Engineering, Inc.'s June 30, 1995 balance sheet is attached as Exhibit 3 to the Joint Petition.

The consuming public will benefit from the proposed transfer. Counce Natural Gas Corp. has agreed to keep the same tariffs and base rates as those presently in effect for Hardin County Gas Company during the first year of operations. Counce Natural Gas Corp. also proposes to vigorously pursue the possibilities of expanding the system.

No customer will suffer a detriment from the transfer. There are no relevant factors weighing against the approval of the transfer.

Counce Natural Gas Corp. understands that following approval of the transfer by the Public Service Commission and following the transfer of assets, it will have full authority to provide the transferred services subject to the continuing regulation of the Public Service Commission. Counce Natural Gas Corp. avers it will fully comply with all applicable policies, rules, and order of the Commission. Hardin County Gas Company understands that it shall no longer have authority to provide the transferred services and shall not be regulated by the Public Service Commission except as provided for in Exhibit A.

DECISION

Having considered the relevant statutory criteria together with the evidence of record, the Administrative Judge is of the opinion that the public interest will be furthered by the transfer of the certificate of convenience and necessity to operate a natural gas distributing company in Hardin County, Tennessee from Hardin County Gas Company to Counce Natural Gas Corp., in accordance with the "Asset, Purchase, and

Sales Agreement" as set forth in Exhibit 2 to the Joint Petition as modified by the Stipulation attached hereto. Counce Natural Gas Corp. is authorized to provide utility service heretofore provided by Hardin County Gas Company pursuant to the certificate issued to Hardin County Gas Company.

T.C.A. § 4-5-315 provides that all parties shall have an opportunity to appeal initial orders to the Commission. The Tennessee Public Service Commission, however, reviews all initial orders, thereby assuring review. *The parties have waived their right to file exceptions and replies to the Initial Order.* The Commission will determine the matter in a regularly scheduled Commission conference. Affected parties may then seek reconsideration of the Commission's final order or may appeal the final order to the Court of Appeals, Middle Division, within 60 days of the final order.

This Initial Order is prepared in conformity with the Tennessee Uniform Administrative Procedures Act, and T.C.A. Section 4-5-101, *et seq.* Procedures whereby parties seek review, stay, or reconsideration are found in T.C.A. Sections 4-5-315 through 318. Judicial review of Commission orders is described in T.C.A. Section 4-5-322.


IT IS THEREFORE ORDERED:

1. That the Joint Petition of Hardin County Gas Company and Counce Natural Gas Corp. for the transfer of a Certificate of Convenience and Necessity to operate a natural gas distribution company in Hardin County, Tennessee from Hardin County Gas Company to Counce Natural Gas Corp., pursuant to the Asset, Purchase and Sale

Agreement as set forth in Exhibit 2 to the Joint Petition and as modified by the attached Stipulation is hereby **granted**.

2. That Counce Natural Gas Corp. is hereby authorized to provide the transferred services subject to the continued regulation of the Tennessee Public Service Commission or its successor.

3. That Counce Natural Gas Corp. shall begin service under the transferred Certificate of Convenience and Necessity following the date of the Final Order entered by the Public Service Commission, the transfer of assets, and upon complying with the rules and regulations of the Tennessee Public Service Commission.



RALPH B. CHRISTIAN, II
ADMINISTRATIVE JUDGE

**BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
NASHVILLE, TENNESSEE**

IN RE: **JOINT PETITION OF HARDIN COUNTY GAS COMPANY AND COUNCE
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DOCKET NO. 95-03379

STIPULATIONS

During negotiations prior to the December 6, 1995 hearing in the above-styled matter, and as announced during that hearing, the parties to this proceeding agreed to further modify the Petition herein filed to reflect the following agreement and stipulations:

1. That Hardin County Gas Company agrees to pay to the tariff customers of Hardin County Gas Company the portion of certain refunds, net of take-or-pay costs, to which they would otherwise be entitled pursuant to the Purchased Gas Adjustment Rules of the Tennessee Public Service Commission, that amount being determined by Hardin County Gas Company is estimated to be approximately \$16,000, the actual calculation to be in accordance with the method used by Hardin County Gas Company to derive the \$16,000. Hardin County Gas Company agrees that it will pay the actual calculated amount but not less than \$16,000. Such calculations, as determined by the company, shall be filed with, and be subject to, audit by the Tennessee Public Service Commission.

2. That Hardin County Gas Company agrees to remain subject to the jurisdiction of the Tennessee Public Service Commission solely for the purpose of the Tennessee Public Service Commission's audit of the refund amounts set out in paragraph 1 above. The duration of Hardin

County Gas Company's period of being subject to such jurisdiction will not exceed six months after the date the refund report is filed.

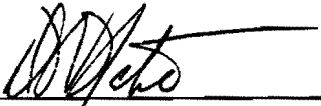
3. That the purchaser, Counce Natural Gas Corp. agrees not to file a rate increase: (1) any earlier than six months from the effective date of the transfer or (2) that will be effective on a date any earlier than one year from the effective date of the transfer.

4. The annual and quarterly report to the Public Service Commission for 1995 will be the responsibility of Hardin County Gas Company. Quarterly and annual reports for 1996 will be the responsibility of Counce Natural Gas Corp. *JKW For HCGA + by permission FCNGB*

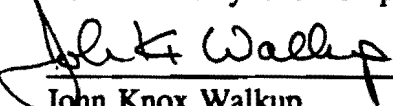
5. A pro forma balance sheet will be provided and placed in the official file at the Commission.

6. The parties waive their right to file exceptions or replies to the Initial Order.


On behalf of Consumer Advocate:


David Yates
450 James Robertson Parkway
Suite 1504 Parkway Towers
Nashville, TN 37243

On behalf of Petitioner,
Hardin County Gas Company


John Knox Walkup
GULLETT, SANFORD, ROBINSON & MARTIN
230 4th Avenue North, 3rd Floor
P. O. Box 198888
Nashville, TN 37219-8888
Attorneys for Petitioner,
Hardin County Gas Company

On behalf of Counce Natural Gas Corp.


Evan E. Tumlinson
President and CEO of Counce Natural Gas Corp.
P. O. Box 736
West Point, MS

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ORDER

This matter is before the Tennessee Public Service Commission upon its own motion.


Having reviewed the Initial Order in the above captioned matter on December 13, 1995, the Commission, pursuant to T.C.A. Section 4-5-315(b), hereby notifies all parties that it will review all issues raised in the record of this proceeding before the Administrative Judge.


Any party may note an exception to the Initial Order by filing a brief with the Commission within zero days of the date of this order. Reply briefs may also be filed within zero days after filing exceptions. Any party may request oral argument on the issues raised in the briefs.

Requests for extensions of time within which to file briefs must be made in writing to the Executive Director of this Commission and accompanied by a proposed order to be signed by the Chairman of this Commission. The request must indicate that

copies of the request and proposed order have been served on all parties.

The Commission decision to review the Initial Order does not affect any party's right to petition the Administrative Judge to reconsider the Initial Order pursuant to T.C.A. 4-5-317. Should such a petition be filed, the time limits set forth in this Order for the submission for exceptions and replies will be suspended and will begin to run ab initio, from the date of the final order disposition of the petition to reconsider.


CHAIRMAN


COMMISSIONER


COMMISSIONER

ATTEST:


EXECUTIVE DIRECTOR