

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on July 12, 2018

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Gregg C. Sayre
Diane X. Burman
James S. Alesi

CASE 18-G-0330 - Joint Petition of Williams Field Services
Company, LLC, Williams Partners, L.P., DMP New
York, Inc., and The Williams Companies, Inc.,
for a Declaratory Ruling Regarding Application
of Section 70 of the New York Public Law.

DECLARATORY RULING ON INTRA-CORPORATE RESTRUCTURING

(Issued and Effective July 17, 2018)

BY THE COMMISSION:

INTRODUCTION

In a petition filed on June 1, 2018, Williams Field Services Company, LLC (WFS), DMP New York, Inc. (DMP), The Williams Companies, Inc. (TWC), and Williams Partners L.P. (WPZ) (collectively, the Petitioners) requested a declaratory ruling that the proposed intra-corporate transfer of indirect interests in jurisdictional gas facilities does not require further review under Public Service Law (PSL) §70 (the Petition). As proposed, TWC would survive a merger with WPZ and acquire 100% of the indirect equity interests in WFS and DMP, which own a 9.82 mile, sixteen-inch, natural gas gathering pipeline in the Town of Windsor (Windsor), New York, and the Dunbar Compressor Station (Dunbar Station) (collectively, the NY Mainline) pursuant to a

lightened regulatory regime previously approved by the Public Service Commission (Commission).¹

Responses to the Petition were due on June 22, 2018, pursuant to the 21-day period prescribed under the Commission's Rules of Procedure, contained in 16 NYCRR §8.2(c). Comments, which are discussed below, were received from Windsor, the Concerned Residents of Windsor (CROW), and Petitioners on June 20, 25, and 26, 2018, respectively. In this ruling, the Commission determines that no further review of the proposed intra-corporate restructuring is required under the PSL.

THE PETITION

DMP and WFS

Petitioners explain that DMP is a wholly-owned, direct subsidiary of WFS. DMP and WFS, Petitioners continue, are wholly-owned, indirect subsidiaries of WPZ. Petitioners aver that TWC owns 100% of WPZ GP LLC (WPZ GP), which is the general partner of WPZ, as well as 74% of the WPZ limited partner interests through its ownership of Williams Gas Pipeline Company LLC.

According to Petitioners, WFS owns and operates the NY Mainline, which includes a natural gas gathering pipeline that interconnects with the interstate pipeline owned by Millennium Pipeline Company, LLC (Millennium Pipeline). Petitioners aver that DMP is "involved" in the ownership and operation of these facilities.

¹ Case 10-G-0462, DMP N.Y., Inc. & Laser Ne. Gathering Co., LLC, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Rate Making Regulation (issued February 22, 2011); Case 13-G-0050, Laser Ne. Gathering Co., LLC et al., Order Approving Transfer (issued June 18, 2013) (collectively, the Regulation Orders).

Petitioners aver that the NY Mainline provides competitive wholesale gathering transportation services to gas production companies located in Pennsylvania. The NY Mainline, Petitioners continue, transports gas produced by these companies to the Millennium Pipeline, where it enters interstate commerce. Petitioners aver that neither Petitioners nor their subsidiaries or affiliates own or operate the Millennium Pipeline, or provide retail services or serve retail customers in New York.

Petitioners aver that the Commission previously granted WFS and DMP the following approvals: (a) a Certificate of Environmental Compatibility and Public Need (CECPN) to construct and operate an additional gas gathering pipeline in Windsor (the NY Mainline Loop PSL Article VII Certificate); (b) an amendment to the NY Mainline PSL Article VII Certificate, which authorized the construction and operation of an expansion of the Dunbar Station (the Dunbar Expansion); and (c) an amendment to the NY Mainline PSL Article VII Certificate that modified the right-of-way described in that license.²

According to the Petitioners, the NY Mainline Loop has been constructed and placed into service, and the Dunbar Expansion is in the final stages of development before being placed into service. Petitioners explain that the NY Mainline Loop and Dunbar Expansion are used to transport natural gas from production wells to the Millennium Pipeline, but they do not provide retail services or serve retail customers in New York. According to Petitioners, the foregoing assets are the only gas plant - as defined by PSL §2(10) - that are owned by TWC, WPZ, WFS, DMP, or any of their subsidiaries or affiliates.

² Case 13-T-0538, et al., Williams Field Servs. Co., LLC and DMP N.Y., Inc., Order Regarding Certificates of Environmental Compatibility and Public Need (issued October 16, 2015) (Certificate Order).

TWC and WPZ

Petitioners aver that DMP is a wholly-owned subsidiary of WFS, a wholly-owned subsidiary of Williams Field Services Group, LLC. which, in turn, is a wholly-owned subsidiary of WPZ. According to Petitioners, WPZ is a publicly-traded master limited partnership. The general partner of WPZ, Petitioners continue, is WPZ GP, which is wholly-owned by TWC. Petitioners explain that WPZ GP has the sole responsibility and authority to manage and control WPZ. Petitioners further explain that the WPZ limited partnership interests are purely passive, economic interests that do not allow their holders to participate in the operation, management, or control of the partnership. The limited partnership interests, Petitioners continue, are held by TWC (approximately 74%) and the public (approximately 26%). None of the public interest holders own 10% or more of the outstanding limited partnership interests. Petitioners explain that TWC wholly-owns WPZ GP and, therefore, has the exclusive right to manage and control WPZ and, indirectly, WFS and DMP.

TWC, Petitioners continue, is an energy infrastructure company that owns and operates interstate natural gas pipelines, natural gas gathering and processing facilities, and natural gas liquids and petrochemical facilities located throughout the United States.

Petitioners aver that the TWC and WPZ interstate natural gas pipeline businesses consist primarily of Transcontinental Gas Pipe Line Company, LLC (Transco) and Northwest Pipeline, LLC (Northwest). The systems owned by these companies, Petitioners explain, are located in many states. Petitioners note that WPZ also indirectly owns 50% of Gulfstream Natural Gas System, L.L.C., which extends from Alabama to Florida.

According to Petitioners, the TWC and WPZ midstream businesses include WFS and DMP and involve natural gas gathering and processing operations. Petitioners explain that WFS and DMP are the only midstream companies subsidiary to, or affiliated with, TWC that are located in New York and subject to Commission regulation.

TWC, through its subsidiary WPZ, also owns portions of the interstate natural gas pipeline owned and operated by Transco. Petitioners aver that Transco does not engage in any wholesale or retail sales of natural gas. Instead, it provides unbundled natural gas transmission and storage services, including transportation of natural gas to fully-regulated New York utilities.

Intra-Corporate Restructuring

Petitioners explain that TWC and WPZ and certain of their subsidiaries executed an Agreement and Plan of Merger (Merger Agreement) on May 16, 2018. The Merger Agreement provides that the 256 million outstanding publicly-held passive, limited partnership interests of WPZ will be converted to TWC common stock at a fixed exchange ratio. WPZ subsequently will merge into TWC, with TWC being the surviving entity. The restructuring, Petitioners continue, will not change the indirect, upstream ownership of WFS and DMP, which will continue to be wholly-owned subsidiaries of TWC. Public holders of the passive, limited partnership interests in WPZ will acquire a minority ownership of TWC common stock and, therefore, will continue to indirectly own WFS and DMP.

Petitioners assert that the intra-corporate restructuring will not affect the operation or management of WFS and DMP. TWC, Petitioners continue, will continue to control the management and operation of its subsidiaries, including WFS and DMP.

Petitioners explain that the Commission has determined that intra-corporate transfers do not require review under PSL §70 if they do not affect the ultimate ownership of the operating company and its jurisdictional facilities, or the proportionate shares held by those owners. The Commission, Petitioners continue, also has found that this includes eliminating a holding company from the ownership structure upstream of the lightly-regulated entity.³ Petitioners aver that the restructuring would not change the identity of the ultimate ownership of WFS or DMP and thus request that the Commission decline to review the restructuring under PSL §70.

Petitioners argue that the proposed intra-corporate restructuring is consistent with other transactions in which the Commission declined to review a proposed restructuring under PSL §70. Petitioners note, for example, that the Commission concluded in the NRG Ruling that eliminating a holding company from the upstream ownership structure of a lightly-regulated entity did not constitute a "transfer" within meaning of PSL §70 because the ultimate owner of the membership interests in the operating subsidiaries did not change, and no new entities were brought into the corporate structure. The proposed transfers, Petitioners continue, similarly would entail intra-corporate transfers that involve eliminating a holding company without otherwise affecting the ultimate ownership of WFS and DMP.

Petitioners further argue that the proposed intra-corporate restructuring cannot create the risk of horizontal or

³ Citing Case 05-E-1582, NRG Energy Inc. and NRG Ne. Generating LLC, Declaratory Ruling on Review of an Intra-Corporate Dissolution Transaction (issued January 26, 2006) (NRG Ruling); Case 18-E-0032, Fortistar North Tonawanda, Inc., Order Approving Financing and Making Other Findings (issued April 20, 2018).

vertical market power.⁴ According to Petitioners, adding or removing intermediate entities within their organizational structure cannot enhance the ability of Petitioners or their affiliates to exercise market power because there is no change in the Petitioners' ultimate ownership or affiliated interest. Petitioners note that the Commission previously found that the gas gathering business is highly competitive, and TWC's ownership and control of WFS and DMP would not create the potential for the exercise of either horizontal or vertical market power.⁵

According to Petitioners, there has been no material change in circumstances since the Acquisition Order was issued that would warrant a contrary finding now. Petitioners aver that the transfers would simply modify the corporate level at which passive investors indirectly own WFS and DMP. The proposed intra-corporate transfers will not create affiliated interests that might present new opportunities to exercise market power. TWC will continue to serve as the ultimate owner with control over all wholly-owned WPZ subsidiaries, including WFS and DMP. The proposed transfers, Petitioners continue, will not affect the market concentration in any market or change the assets held or controlled by TWC, or how they are operated.

Finally, Petitioners request that the Commission approve the proposed intra-corporate transfers under PSL §70 if

⁴ An entity's horizontal market power relates to its share of power plants (market share) in relation to the total size of power plants participating in the market. Vertical market power may arise where a single firm owns both generation and delivery assets, and the delivery assets can be used to give a preference to the affiliated generation assets.

⁵ Citing Case 11-G-0656, DMP N.Y. Inc. et al., Declaratory Ruling on Review of an Ownership Transfer Transaction (issued February 21, 2012) (Acquisition Order).

it instead determines that further regulatory review is required.

COMMENTS

Windsor encouraged the Commission to "carefully review" the proposed intra-corporate reorganization. Windsor also recommended that the Commission conduct independent research on issues relevant to the proposed restructuring, and consider whether full regulatory review is required under PSL §70.

CROW urged the Commission to terminate the lightened ratemaking regimes previously approved for WFS and DMP, and instead subject these companies to the full weight of PSL regulation. CROW argues that increased regulatory scrutiny is required because Dunbar Station modifications will increase its throughput, and the NY Mainline purportedly has had negative impacts on local residents.

CROW references three sets of documents in support of its position. First, CROW references 24 documents filed in Case 13-T-0538, which pertained to the CECPN application for approval to construct the NY Mainline. Second, CROW identifies several editions of the Compendium Of Scientific, Medical, and Media Findings (Compendium). According to CROW, the Compendium demonstrates that natural gas production and transportation activities present health and safety risks, and these risks justify increasing the regulatory scrutiny applied to WFS and DMP. Finally, CROW notes that the Wingspread Consensus Statement on the Precautionary Principle (Wingspread Statement) provides that precautionary measures should be adopted when an activity might present a risk of harm to human health or the environment, whether or not a causal link between activity and impact has been conclusively established. CROW asserts that

residents near the Dunbar Station have been subject to noise, odors, and increased health and safety risks due to the operation of this facility. According to CROW, these impacts warrant increasing the regulatory burden imposed on WFS and DMP.

As to the Petition, CROW asserts that Petitioners rely on Commission precedent that applies only to retail transactions but the proposed restructuring also implicates a potential tax reduction. According to CROW, the potential tax reduction would impact its members and other New York residents, and a full regulatory review of the proposed transfers is needed to evaluate the potential tax impacts arising from the transfers.

Petitioners' comments respond to CROW. Petitioners initially note that CROW's arguments are a procedurally improper collateral attack on the Certificate Order that do not present any compelling reason to warrant reconsideration of that decision. The intra-corporate restructuring, Petitioners continue, will not affect the management or daily operations of Dunbar or modify any existing obligation to Windsor, including the payment of property-related taxes.

LEGAL AUTHORITY

Pursuant to PSL §70, the Commission must review and approve proposed transfers of ownership interests in jurisdictional facilities and properties. The PSL §70 review process has been adapted over time to accommodate lightened ratemaking regulation policies. Entities subject to lightened regulation operate in competitive markets and, therefore, must support a §70 transfer request with a demonstration that the transaction will not present the purchaser with the opportunity to exercise either horizontal or vertical market power, or

otherwise harm the interests of captive ratepayers of fully-regulated utilities.⁶

The Commission has determined that full regulatory review is not needed for certain transactions that do not affect the ultimate ownership of the operating company and its jurisdictional facilities. In particular, the Commission has found that inserting a holding company into, or removing a holding company from, an ownership structure upstream from lightly-regulated entities that operate electric plant does not amount to a transfer under PSL §70 because there is no change in the identity of the ultimate ownership or material change in the proportionate shares held by the ultimate owner(s).⁷

The Commission's authority to issue a declaratory ruling with respect to (i) the applicability to any person, property, or state of facts of any rule or statute enforceable by it, or (ii) whether any action by it should be taken pursuant to a rule, and to decline to issue such a declaratory ruling, is expressly established by State Administrative Procedure Act §204 and governed by regulations, 16 NYCRR Part 8, implementing that statute.

DISCUSSION AND CONCLUSION

The proposed restructuring fits within Commission precedent finding that regulatory review of intra-corporate reorganizations is not required if there is no change in the operating company's ultimate ownership, or material change in the proportionate shares held by same. The restructuring will

⁶ See, e.g., Wallkill Order.

⁷ NRG Ruling; Case 07-E-0584, NRG Energy, Inc., Declaratory Ruling on Review of an Inter-Corporate Transaction (issued July 23, 2007) (together with the NRG Ruling, the "NRG Rulings").

not introduce a new owner into the organizational structure, remove an existing owner, or materially alter the proportionate shares held by the existing owners. Moreover, the restructuring would not create the potential for the exercise of market power, as the mere elimination of an intermediate company cannot enhance the Petitioners' ability to exercise market power. As a result, the restructuring does not pose the potential for harm to captive ratepayer interests. Accordingly, the restructuring falls within the ambit of the NRG Rulings, where it was decided that intra-corporate transactions that do not affect ultimate ownership do not require further regulatory review. In reaching this finding, the Commission has examined all issues relevant to an intra-corporate reorganization that involves a lightly-regulated entity, as advocated by Windsor.

CROW Issues

CROW asserted that operation of the Dunbar Station has certain impacts on local residents and identified several documents that it claims justify terminating the lightened regulatory regimes previously approved for WFS and DMP. Upon review, the Commission finds that the concerns raised by CROW are not persuasive. CROW does not present sufficient explanation or justification to warrant the regulatory expansion requested. In particular, CROW does not explain how certain documents filed in Case 13-T-0538 justify increasing the regulatory burden imposed on WFS and DMP.

The Commission previously examined impacts associated with construction and operation of the NY Mainline and related expansion projects. CROW does not explain why the Compendium and Consensus Statement justify re-examining the underpinnings of those decisions at this time. Further, as Petitioners restate in their comments, the proposed restructuring does not create a need to re-examine potential impacts associated with

the NY Mainline because it will not alter the management or daily operations of those facilities. Regardless, such issues exceed the scope of issues considered in the course of examining proposed corporate reorganizations.

Finally, CROW's argument that the Commission should examine the potential tax impact of the proposed intra-corporate restructuring also exceeds the scope of this proceeding. The Commission consistently has found that intra-corporate transfers that restructure a corporate organization, without changing the ultimate ownership of lightly-regulated companies, do not require full regulatory review under the PSL. Potential changes in tax liability following consummation of the proposed transfers are beyond the scope of this examination,⁸ and need not be considered here.

The Commission finds and declares:

1. No further review will be conducted of the proposed transaction described in the petition filed in this proceeding and discussed in the body of this ruling.

2. This proceeding is closed.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary

⁸ Also, Petitioners' comments state that the proposed intra-corporate reorganization will not modify their existing property-related tax obligations with regard to Windsor.