

LOUISIANA PUBLIC SERVICE COMMISSION

ORDER NUMBER S-37079

DELTA STATES UTILITIES LA, LLC AND ENTERGY LOUISIANA, LLC.

Docket No. S-37079, In re: Joint application for approval of acquisition of Entergy's gas local distribution company assets to Delta States, and Delta States' request for authority to operate as a gas local distribution company and incur indebtedness related thereto.

(Decided at the August 14, 2024 Business and Executive Session.)

ORDER

I. BACKGROUND

On December 11, 2023, Delta States Utilities LA, LLC (“DSU LA” or “Buyer”) and Entergy Louisiana, LLC (“ELL” or “Seller”) filed a joint application (“Application”) with the Louisiana Public Service Commission (“LPSC” or the “Commission”), seeking the following requested relief relating to a Purchase and Sale Agreement (“PSA”) entered into between ELL and DSU LA on October 28, 2023, and financing and encumbrance associated with the asset acquisition (together the “Transaction,” as more fully defined in the Application on page 1):¹

1. LPSC approval of DSU LA to operate as a natural gas distribution utility in the state of Louisiana and subject to the jurisdiction of the LPSC;
2. LPSC approval of the transfer and sale of the Purchased Assets and assumption of the Assumed Liabilities, in each case defined in the PSA and in accordance with the Transaction Agreements,² of the ELL Gas Business³ and acquisition by DSU LA of the same as in the public interest;
3. LPSC approval of DSU LA’s assumption and adoption of the ELL Gas Business rates, rate schedules and riders in effect at the Closing⁴ or supported by the most recent evaluation period of ELL’s RSP and Rider IIRR-G, which assumption and adoption will continue until the LPSC’s review and approval of DSU LA’s proposed base rates and rate schedules as part of a subsequent rate application to be filed by DSU LA no sooner than fifteen (15) months after the Closing, using a prior consecutive twelve (12)-month test period;

¹ Application at Para. 35 (“Prayer for Relief”).

² The “Transaction Agreements” are defined in the Application as collectively the PSA and the Ancillary Agreements thereto (as defined in the PSA) between ELL and DSU LA. *See* Application at Para. 3.

³ The “ELL Gas Business” is defined in the Application as the Purchased Assets and Assumed Liabilities (as defined in the PSA) of ELL’s LPSC-jurisdictional local distribution company. *See* Application at p. 1.

⁴ The “Closing” is defined in the Application as the closing of the Transaction between ELL and DSU LA. *See* Application at Para. 3.

4. LPSC approval for DSU LA to create a regulatory asset(s) to defer for future recovery, subject to a prudency review in a future general rate proceeding and with such recovery to be net of amounts recovered in ELL Rates⁵ adopted by DSU LA at Closing related to the Excluded Assets,⁶ investments made by DSU LA (a) in the assets and services needed to replace Excluded Assets and services provided by ELL and its affiliate companies, and (b) in recognition of the need for DSU LA to make certain expenditures prior to establishment of new LPSC-approved rates in a subsequent rate proceeding for recovery of DSU LA's investments in standing up the new gas distribution business and replacing certain assets that will not transfer and certain services that will no longer be provided by ELL after Closing;
5. LPSC determination that the costs of Purchased Assets not yet in service but currently categorized by ELL as CWIP⁷ do not constitute acquisition premium, or that the LPSC not specifically determine that such costs do constitute an acquisition premium, such that these costs are eligible for recovery in rates once placed in service, subject to prudency considerations;
6. LPSC stating its non-opposition to DSU LA's incurring indebtedness to finance the Transaction and costs to stand-up the new LDC and for DSU LA's encumbering of the Purchased Assets with a mortgage and/or security interest to secure the indebtedness;
7. LPSC approving or stating its non-opposition to the transfer of customer deposits from ELL to DSU LA, subject to the terms of the PSA;
8. LPSC approving ELL's transfer of certain customer data, including specifically, data related to ELL's AMI system;⁸
9. LPSC finding that LPSC ratemaking provisions of orders applicable to ELL continue to be applicable to DSU LA as of the Closing, which at the time of filing this Joint Application include, but may not be limited to, General Order dated March 24, 1999 (Docket No. U-22407), Order Nos. U-32682, U-34320, U-34744, U-35370, U-36265, U-36338, LPSC Letter Ruling dated November 6, 2019, and LPSC General Orders and

⁵ The "ELL Rates" are defined in the Application as the ELL Gas Business rates, rate schedules and riders in effect at the Closing and/or supported by the most recent evaluation period of ELL's Rate Stabilization Plan ("RSP") and Gas Infrastructure Investment Recovery Rider ("Rider IIRR-G") filings. *See* Application at p. 2.

⁶ The "Excluded Assets" are referenced in the Application as being defined in the PSA and relate to the assets and services of ELL and affiliate companies that are used to operate the ELL Gas Business and that will not be acquired by DSU LA in connection with the Closing. *See* Application at p. 2.

⁷ "CWIP" is defined in the Application as construction work in progress and relates to the costs of Purchased Assets not yet in service but currently categorized by ELL as construction work in progress. *See* Application at p. 2.

⁸ The "AMI" system is defined in the Application as ELL's advanced metering infrastructure system. *See* Application at p. 3.

Special Orders of general application to LPSC-jurisdictional natural gas public utilities;

10. LPSC granting expedited treatment of the Joint Application, including for this Joint Application to be published in the December 2023 LPSC Bulletin, with a 15-day intervention, and considered by the Commission not later than the June 2024 LPSC Business & Executive Session; and
11. For all other general and equitable relief to which DSU LA and ELL show themselves to be entitled.

The Application between DSU LA and ELL was published in the LPSC's Official Bulletin #1313, dated December 22, 2023, with a fifteen (15) day intervention period. No interventions were filed. For the reasons discussed herein, Staff recommended that the Commission approve the Application of DSU LA and ELL as in the public interest and grant the above-referenced requests as set forth in the Prayer for Relief of the Application, subject to the conditions recommended by Staff herein.

After extensive review, Staff filed its *Staff Report and Recommendation* on July 30, 2024. On July 31, 2024, DSU LA and ELL filed *Joint Reply to Staff Report and Recommendation* indicating their concurrence with the *Staff Report and Recommendation* and requesting this matter be heard at the Commission's Official Business and Executive Session on August 14, 2024.

II. COMMISSION AUTHORITY

The Commission exercises jurisdiction in this proceeding pursuant to Article IV, Sec. 21 of the Louisiana Commission.

La. Const. Art. IV. Sec. 21 provides in pertinent part:

The commission shall regulate all common carriers and public utilities and have such other regulatory authority as provided by law. It shall adopt and enforce reasonable rules, regulations and procedures necessary for the discharge of its duties, and shall have other powers and perform other duties as provided by law.

Pursuant to this authority, the Commission issued its **March 18, 1994 General Order**, as amended ("1994 General Order"), which requires utilities to respond to the eighteen (18) points. The 1994 General Order provides on pertinent part:

No utility or common carrier subject to the jurisdiction of the Louisiana Public Service Commission shall sell, assign, lease, transfer, mortgage, or otherwise dispose of or encumber the whole or any part of its franchise, works, property, or system, nor by any

means direct or indirect, merge or consolidate its utility works, operations, systems, franchises, or any part thereof, nor transfer control or ownership of any assets, common stock or other indicia of control of the utility to any other person, corporation, partnership, limited liability company, utility, common carrier, subsidiary, affiliated entity or any other entity, nor merge or combine with another person, corporation, partnership, limited liability company, utility, common carrier, subsidiary, affiliated company or any other entity, or divide into two or more utilities or common carriers, where the values involved in such action exceed one percent (1%) of the gross assets of such regulated utility or common carrier, or subsidiary thereof, nor in any way commit itself to take such action or affect any right, interest asset, obligation, stock ownership, or control, involved in such action without prior full disclosure of the prior intent and plan of such utility or common carrier with regard to such action and without prior official action of approval or official action of non-opposition by the Louisiana Public Service Commission. This section is intended to apply to any transfer of the ownership and/or control of the public utilities and common carriers regardless of the means used to accomplish that transfer.

In determining whether to approve any such transfer of ownership or control, the Commission shall take into account the above factors.

III. STAFF REVIEW

DSU LA provided Staff with its responses to the eighteen (18) points, as summarized below:

- DSU LA has committed to adhere to the terms of ELL's rate schedules and riders, ELL's rate stabilization plan, Rider IIRR-G, Rider PGA and the Advanced Metering System Customer Charge Schedule in effect at Closing or supported by the most recent evaluation period of ELL's RSP and Rider IIRR-G until a revised final order by the Commission in a future DSU LA rate proceeding.
- DSU LA will continue to provide a high level of safe, reliable, and affordable local gas distribution services to all of ELL's existing LDC customers.
- DSU LA possesses the financial, technical, and managerial expertise in the industry with a strong commitment to Louisiana and local job creation.
- The transfer of ELL's local gas distribution system will not have a negative effect on any local competition.
- DSU LA has stated the resulting gas-distribution company will have access to local equity capital through its relationship to Bernhard Capital, and additional capital required to maintain or improve the financial condition of the LDC and sustain its operations.

Staff reviewed the Application as well as accompanying exhibits and answers to formal data requests. Audit Staff also contacted Louisiana Department of Energy and Natural Resources (“LDENR”) regarding the system’s compliance. LDENR informed Staff the system currently has an open citation relating to the requirements to maintain pressure testing. The citation stems from ELL’s loss of testing records during the Baton Rouge flood in 2016. ELL submitted a Waiver Request to LDENR on March 27, 2024, that is currently being considered. This citation will remain open after the sale of the gas system to DSU LA. DSU LA has stated they would further assume any obligations to resolve any open citation issues post-Closing of the Transaction.⁹

In the Application, DSU LA has stated it will adopt the ELL Rates, facilitating seamless services to existing customers and rates based upon existing established procedures. These rates will remain in place until a consecutive twelve (12) month period is established to serve as a historical test year for a subsequent future rate proceeding. DSU LA has committed to filing a rate proceeding no sooner than fifteen (15) months post-Closing of the Transaction. Along with adopting ELL Rates, DSU LA is committed to maintaining ELL’s other riders, including the Purchase Gas Adjustment (“Rider PGA”), the Rider RSP, the Rider IIRR-G, and the Advanced Metering System Customer Charge Rate Schedule. Thus, with the Closing of the Transaction, DSU LA will adopt all of ELL’s rates and schedules in effect at Closing or supported by the most recent evaluation period of ELL’s RSP and Rider IIRR-G. Staff has agreed with DSU LA’s request to adopt ELL Rates (Prayer for Relief No. 3) with a future rate proceeding to be filed no sooner than fifteen months post-Closing of the Transaction.

DSU LA requested approval to create a regulatory asset(s) to defer for future recovery, subject to a prudence review in a future general rate proceeding and net of amounts recovered in ELL Rates adopted by DSU LA at Closing (Prayer for Relief No. 4) (“Regulatory Asset”). The purpose of establishing a Regulatory Asset is for deferring for future recovery the capital costs and expenses of the assets, services, and employees needing to be acquired as part of the Transition Plan¹⁰ to achieve Day One Readiness that are ultimately determined to be prudently incurred. It is Staff’s understanding that the prudence and manner of recovery of prudently incurred costs

⁹ Staff received a Non-Compliance Memo from Steve Giambrone, LDENR Pipeline Division Director, on February 2, 2024 stating the open citation for ELL’s gas system with citation number 1077 (“Compliance Issue”).

¹⁰ Transition Plan is defined on page 7 of the Direct Testimony of DSU LA witness Mr. Brian Little as the plan to create stand-alone and core focused gas LDCs (DSU NO and DSU LA, respectively), such that upon the transfer of the Purchased Assets at Closing the LDCs are fully and operationally independent of Entergy on day one post-Closing and a seamless transfer of operations is achieved (“Day One Readiness”).

deferred to the Regulatory Asset would be reviewed in DSU LA's first rate filing post-Closing, and because of that understanding, Staff took no position on the reasonableness of the recovery of those expenses until the first-rate filing is filed with the Commission. Staff also understood that additional reductions in Transition Plan costs would occur if a proposed transaction associated with the natural gas assets of CenterPoint Energy Resources Corp.¹¹ is approved by the LPSC and Mississippi Public Service Commission. Staff expressed its belief that the creation of the Regulatory Asset allows for Transition Plan expenses to be appropriately reviewed for prudence in a future rate filing. Although Staff agreed with the request to establish the Regulatory Asset, that will include carrying costs, Staff took no position in the decision regarding the prudence of the costs to be deferred to the regulatory asset and will defer any such decisions and impact on recovery of such costs to the future rate case.

DSU LA has provided Staff with an estimate of how the Company intends to recover the Regulatory Asset. DSU LA has stated the Regulatory Asset would accrue carrying costs at DSU LA's weighted average cost of capital ("WACC"), which initially would be based on DSU LA's cost of debt and ELL's authorized target return on equity ("ROE") and authorized capital structure. DSU LA proposed to record the Transition Plan costs required to stand up its new gas utility in the Regulatory Asset and to accrue interim carrying costs on the regulatory asset as the costs and expenses are booked pending the LPSC's consideration of DSU LA's recovery of the Regulatory Asset costs in its initial rate case application. Staff expressed its agreement in authorizing DSU LA to track all expenses related to the Transition Plan cost and carrying cost for the gas utility as a Regulatory Asset. However, Staff took no position in this docket regarding the method used by DSU LA in the recovery of the Transition Plan cost and carrying cost and will defer all decisions on the manner of recovery to the future rate case.

ELL has a current capital structure of approximately 52% equity and 48% debt for ratemaking purposes. Staff noted its position is that DSU LA will continue the same capital structure moving forward after the Closing of this Transaction. The LPSC has noted a concern of significantly rising equity positions in gas distribution and natural gas providers in Louisiana whereas equity capital contributions have led to higher costs for ratepayers. This increase in cost occurs as capital funding from equity sources has historically been more costly than debt funding

¹¹ See LPSC Docket No. S-37187.

sources. DSU LA has indicated to Staff that it has the access to capital necessary to ensure the capital structure is the same or significantly the same moving forward. As evidenced by the Application, DSU LA is taking on ELL's assets at current tariffed rates with existing cost recovery structures in place. Staff indicated that it is therefore comfortable that the current capital structure will not have a significant impact on ratepayers. While Staff took no position at this time on any change in capital structure, Staff notes that any departure from the current capital structure could potentially impact ratepayers.

Audit Analysis of the 18 points

Staff generally agreed with DSU LA's responses to the 18 points, as summarized below:

- Staff found that the Transaction is in the public interest.
- Staff found that because DSU LA has the necessary access to capital, DSU LA will be able to ensure the system's compliance.
- Staff found that the Transaction will be fair and reasonable to ELL's employees.
- Audit Staff found that the Transaction will preserve the jurisdiction of the Commission and its ability to effectively regulate and audit the utility operations in the State of Louisiana.

IV. STAFF RECOMMENDATION

Staff reviewed DSU LA and ELL's Application and relevant Commission Orders. Based on Staff's review of the Application, the accompanying financials, the responses to the 18 points in accordance with the Commission General Order dated March 18, 1994, the responses to Staff's multiple data requests, Staff indicated its belief that the Transaction, and the resulting transfer of the Purchased Assets to DSU LA, assumption of the Assumed Liabilities by DSU LA, and financing and associate asset encumbrance, are in the public interest. As such, Staff recommended that the Commission approve the Application of DSU LA and ELL and grant the requests in the Prayer for Relief of the Application, subject to the following conditions:

1. Should the Purchase and Sale Agreement be modified in any way prior to Closing, the newly revised agreement shall be filed into the record of this proceeding no later than seven (7) business days after such modification.

2. If the Closing of the Transaction does not take place prior to October 27, 2025, DSU LA shall be required to file a letter into the record of the Docket, no later than November 11, 2025, detailing why.
3. DSU LA shall be ordered to file into the record of this proceeding, along with a copy to the Commission's Utilities Division, a draft initial tariff reflecting the Commission's action, within sixty (60) days of issuance of an Order in this proceeding. DSU LA shall file into the record of this proceeding a final initial tariff within 7 days post-Closing, updating the draft initial tariff to reflect changes to ELL's tariff between a final order in this proceeding and Closing, if any, and specifying the tariff effective date.
4. Within ninety (90) days of Closing of the Transaction, DSU LA shall file into the record of this proceeding an update on the LDENR Compliance Issue. Thereafter, until conclusion of DSU LA's initial rate proceeding, DSU LA shall semi-annually file in the record of this proceeding an update on the LDENR Compliance Issue. For good cause, the Commission may extend this reporting requirement by final Order in DSU LA's initial rate proceeding.
 - a. Such semi-annual filings shall include reports of the progress made to remedy the LDENR Compliance Issue.
5. Within sixty (60) days of Closing of the Transaction, DSU LA shall file with the Utilities Division proof that DSU LA has obtained an operator ID from the LDENR.
6. ELL shall provide DSU LA with all financial information, customer lists and data (including related to ELL's advanced metering infrastructure system), and any other information pertaining to the natural gas system at the Closing of the Transaction, and the transfer of customer deposits will occur pursuant to the terms of the PSA. To the extent ELL and DSU LA believe that sharing certain financial, customer, and other information before the Closing of the Transaction will further a seamless transition of the gas business and better enable DSU LA to achieve Day One Readiness, the Commission authorizes ELL and DSU LA to enter into appropriate arrangements to do so provided the information is properly maintained as confidential.
7. The Closing of the Transaction shall not cause the interruption of gas service to the affected customers.

8. This approval is made without prejudice to the authority of the Commission to make investigations and require any reasonably necessary change that the Commission may legally find to be in the public interest if conditions of the Order in this proceeding are not satisfied.

V. COMMISSION CONSIDERATION

After discussion, on motion of Commissioner Greene, seconded by Commissioner Campbell, and unanimously adopted, the Commission voted to accept the Staff Report and Recommendation filed into the record on July 30, 2024.

IT IS THEREFORE ORDERED THAT:

- 1) The Staff Report and Recommendation filed into the record on July 30, 2024, is accepted;
and
- 2) This order is effective immediately.

BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA
September 10, 2024



/S/ MIKE FRANCIS

DISTRICT IV
CHAIRMAN MIKE FRANCIS

/S/ DAVANTE LEWIS

DISTRICT III
VICE CHAIRMAN DAVANTE LEWIS

/S/ FOSTER L. CAMPBELL

DISTRICT V
COMMISSIONER FOSTER L. CAMPBELL

/S/ ERIC F. SKRMETTA

DISTRICT I
COMMISSIONER ERIC F. SKRMETTA

/S/ CRAIG GREENE

DISTRICT II
COMMISSIONER CRAIG GREENE

A handwritten signature in blue ink that reads "Brandon M. Frey" followed by a stylized flourish.

BRANDON M. FREY
SECRETARY