

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. G-40, SUB 136

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Joint Application of Frontier Natural Gas) ORDER JOINING NECESSARY
Company and FR Bison Holdings, Inc., for) PARTY AND REQUIRING
Approval of Acquisition of Stock of Gas) ADDITIONAL VERIFIED
Natural, Inc.) INFORMATION

HEARD: May 8, 2017, 2:00 p.m., Commission Hearing Room 2115, Dobbs Building,
430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner ToNola D. Brown-Bland, Presiding; Chairman Edward S.
Finley, Jr.; and Commissioners Bryan E. Beatty, Don M. Bailey, Jerry C.
Dockham, James G. Patterson, and Lyons Gray

APPEARANCES:

For Frontier Natural Gas Company and Gas Natural, Inc.:

M. Gray Styers, Jr., Smith Moore Leatherwood, 434 Fayetteville Street,
Suite 2800, Raleigh, North Carolina 27601

For FR Bison Holdings, Inc., and First Reserve Corporation:

James H. Jeffries IV, Moore & Van Allen PLLC, 100 N. Tryon Street, Suite
4700, Charlotte, North Carolina 28202

For the Using and Consuming Public:

Elizabeth D. Culpepper, Staff Attorney, Public Staff – North Carolina Utilities
Commission, 4326 Mail Service Center, Raleigh, North Carolina 27699-
4300

BY THE COMMISSION: This matter is now before the Commission for decision on the issue of whether the Commission is in position to or should determine that the proposed merger between Frontier Natural Gas Company and FR Bison Holdings, Inc. satisfies the public convenience and necessity requirement based on the current record of evidence, without BlackRock, Inc.'s appearance and submission of evidence, given that BlackRock would be the ultimate owner of Frontier Natural Gas Company's parent company, Gas Natural, Inc., if the pending application for merger is approved.

On November 23, 2016, Frontier Natural Gas Company (Frontier) and FR Bison Holdings, Inc. (FR Bison) (collectively, Applicants), filed an application pursuant to G.S.

62-111(a) for: (1) authorization for First Reserve Corporation to acquire one hundred percent (100%) of the stock of Gas Natural, Inc. (GNI), the parent company of Frontier, pursuant to an Agreement and Plan of Merger among Gas Natural, Inc., FR Bison Holdings, Inc., and FR Bison Merger Sub, Inc. (Merger Agreement), which was filed as Exhibit C to the Application, and (2) authorization and/or waiver as necessary and appropriate to effect the proposed transaction. The Application also included a cost-benefit analysis, and charts showing both GNI's current corporate organization and the new corporate organization following the proposed transaction. In support of the Application, the Applicants also filed the testimony of James E. Sprague, Chief Financial Officer of GNI; Fred A. Steele, President/General Manager of Frontier; Kevin J. Degenstein, Chief Operating Officer and Chief Compliance Officer of GNI; and Ryan Shockley, Managing Director of First Reserve Corporation.

On January 30, 2017, the Commission issued an order that, among other things, set the application for hearing on May 8, 2017. On February 6, 2017, the Commission issued an Order Granting Waiver of Market Power Analyses Requirement on the request of the Applicant and recommendation of the Public Staff. The Applicants and the Public Staff are the only parties in the docket.

On February 14, 2017, the Applicants filed an amended application and the revised direct testimony of Applicants' witness Shockley. In the amended application (amended Application or Application), the reference to First Reserve Corporation was revised to refer to FR Bison, and the name First Reserve was used to reference First Reserve Energy Infrastructure GP II, Limited. The references to First Reserve throughout the remainder of this Order are to First Reserve Energy Infrastructure GP II, Limited.

Applicants stated that the amended Application was the result of two events that first became known to First Reserve after the filing of the original Application. First, Applicants realized that GNI could become a U.S. Real Property Holding Company for federal income tax purposes, which could potentially violate covenants in First Reserve's agreements with investors in its infrastructure funds. In order to eliminate this possibility, First Reserve changed the identity of the immediate parent of FR Bison from First Reserve Energy Infrastructure Fund II, L.P., to another First Reserve affiliate, FREIF II Echo AIV, L.P. (FREIF). Second, First Reserve Partners L.P., First Reserve Management, L.P. (collectively, FR Sellers) and BlackRock, Inc. (BlackRock) had entered into an agreement pursuant to which the FR Sellers agreed to sell their energy infrastructure business to BlackRock (BlackRock Transaction). According to the Applicants, the BlackRock Transaction, upon closing, would result in a change in the ultimate parent of GNI from First Reserve to BlackRock, but would not otherwise impact GNI, Frontier, Frontier's customers, or the merger. The amended Application and the amended testimony of Ryan Shockley, reflecting the changes made as a result of these two events, requested approval of the merger, with the additional component of the BlackRock Transaction.

On May 2, 2017, the Public Staff filed the joint testimony of its witnesses and attached to the Public Staff testimony was a set of proposed regulatory conditions that had been agreed to by the Public Staff, the Applicants, and certain other entities (Regulatory Conditions). Subject to the agreed upon Regulatory Conditions, the Public

Staff testimony supported approval of the Merger as being consistent with the Commission's requirements under G.S. 62-111(a).

On May 4, 2017, the Applicants filed the Rebuttal Testimony of Ryan Shockley and the Joint Rebuttal Testimony of Fred A. Steele, Kevin J. Degenstein, and James E. Sprague. This testimony acknowledged the Applicants' support of, and agreement with, the Regulatory Conditions and urged approval of the proposed merger as justified by the public convenience and necessity. Also on May 4, 2017, First Reserve and First Reserve Energy Infrastructure Fund II, L.P. filed a statement with the Commission consenting to the Regulatory Conditions proposed by the Public Staff.. Further, they stated that their consent to the Regulatory Conditions "does not constitute a general consent to expansion of the North Carolina Utilities Commission's jurisdiction over [them] beyond that established by Chapter 62 of the North Carolina General Statutes."

On May 8, 2017, BlackRock filed a confidential statement with the Commission, but did not intervene or file testimony in the proceeding.

The matter came on for hearing before the Commission on May 8, 2017, as scheduled. No public witnesses testified regarding this matter. The prefiled testimony and exhibits of the Applicants were admitted into the record and received into evidence without objection. In addition, the Amended Application and exhibits thereto were entered into the record without objection. Witnesses Shockley, Steele, Degenstein and Sprague also testified at the hearing on behalf of the Applicants and answered the Commission's questions under oath. The Applicants requested that the Commission take judicial notice of letters filed by First Reserve and BlackRock in this proceeding on May 4 and May 8, 2017, respectively. With respect to the BlackRock Transaction, the Applicants requested that the merger be approved regardless of the pendency of that transaction, on the basis that the merger satisfies the public convenience and necessity either with First Reserve as the ultimate parent of GNI, or with BlackRock as the ultimate parent of GNI. (T, at pp. 164-165). The prefiled testimony and exhibits of the Public Staff were also admitted and received in to evidence without objection and the Public Staff witnesses also testified at the hearing. However, BlackRock, as a non-party, did not appear at the hearing or otherwise provide any evidence for the Commission's consideration.

On June 8, 2017, the Applicants filed notice with the Commission of the closing of the BlackRock Transaction, which, according to Applicants made "BlackRock the ultimate corporate parent of the First Reserve fund seeking authorization to acquire Gas Natural, Inc. in this docket."

On June 15, 2017, the Applicants and Public Staff filed a Joint Proposed Order and a Supplemental Brief on Specified Issues, including the issue addressed herein, *i.e.*, whether the Commission is able to or should determine that the proposed merger satisfies the public convenience and necessity requirement without BlackRock's appearance and submission of evidence given that BlackRock would be the ultimate owner of GNI if the pending application for merger is approved.

Discussion and Decision

In order for the Commission to approve the pending merger whereby First Reserve would acquire ownership of GNI, Frontier's parent company, the Commission must find the transaction justified by the public convenience and necessity.

No franchise now existing or hereafter issued under the provisions of this Chapter other than a franchise for motor carriers of passengers shall be sold, assigned, pledged or transferred, nor shall control thereof be changed through stock transfer or otherwise, or any rights thereunder leased, nor shall any merger or combination affecting any public utility be made through acquisition of control by stock purchase or otherwise, except after application to and written approval by the Commission, which approval shall be given if justified by the public convenience and necessity.

G.S. 62-111(a). Through this public convenience and necessity requirement, the Commission is given clear authority to decide who owns and controls the public utilities that the Commission regulates.

The testimony and the June 8, 2017, letter notifying the Commission of the completion of the BlackRock Transaction make it clear that BlackRock will be the ultimate owner and entity in control of GNI, and, by extension, Frontier, if the application for approval of acquisition and resulting merger is approved by the Commission. While First Reserve provided evidence of its plans regarding its ownership, control and governance of GNI and regarding how it would make capital allocation decisions with respect to Frontier, the closing of the BlackRock Transaction means that First Reserve's testimony can only be considered by the Commission as that of the penultimate owner of GNI. First Reserve could not and did not provide testimony regarding the plans of BlackRock with respect to its ultimate ownership, control, governance and capital financing of GNI and/or Frontier. Moreover, there is nothing in the record that is binding upon BlackRock with respect to the testimony and commitments of First Reserve. Therefore, the Commission determines and concludes that it cannot approve the pending application without receiving evidence on the record of BlackRock's plans with respect to GNI and Frontier. The Commission further concludes that, as BlackRock would obtain the ultimate ownership or control of Frontier, BlackRock is a necessary party to this proceeding. See North Carolina Rules of Civil Procedure, Rule 19(b).

In their post-hearing Brief, the Applicants and Public Staff (parties) argue that the Commission can approve the pending application of acquisition because: (1) since the participants in the BlackRock Transaction were not under the jurisdiction of the Commission at the time of the BlackRock Transaction, the participants were not required to obtain the Commission's approval; and (2) the BlackRock Transaction does not alter the material facts underlying the approval sought by the Applicants from the Commission for consummation of the merger.

With regard to the parties' first argument, the Commission agrees. On the date of the BlackRock Transaction, June 2, 2017, the participants were not public utilities nor were they transferring or acquiring a public utility that was subject to the jurisdiction of the

Commission. As a result, the participants did not need the Commission's approval to enter into the BlackRock Transaction. Still, as the Applicants have acknowledged in seeking approval of the First Reserve acquisition of GNI pursuant to G.S. 62-111(a), the Commission must determine whether a change in ownership and control of a public utility subject to its regulation is justified by the public convenience and necessity. The Commission cannot reach a well-informed decision on the pending application when it now knows that approval of the application would lead to yet another change in the ultimate ownership and control of GNI and Frontier and that the new ultimate owner has not presented itself to the Commission or made its intentions or future plans respecting GNI and Frontier known. Just as the Commission's approval was required for First Reserve to assume the position of ultimate owner of GNI and Frontier, it is consistent with G.S. 62-111(a) that the Commission must approve BlackRock as the ultimate owner of GNI and Frontier—a change in ownership that will not happen except on the approval of the pending application.

With regard to the parties' second argument, they contend that "BlackRock is an upstream ownership entity many layers removed from Frontier and will not be directly involved in Frontier's delivery of utility services to its customers The closing of the BlackRock Transaction does not alter the accuracy or substantive validity of the Amended Application or the testimony presented to the Commission at the hearing of this matter. " Supplemental Brief on Specified Issues, at p. 5.

The Commission disagrees that the BlackRock Transaction does not alter the material facts underlying the approval sought. The Commission is not persuaded that BlackRock will not be directly involved in Frontier's delivery of utility services. More importantly, contrary to the parties' assertion in their Brief, the testimony provided by the Applicants does not provide the Commission with sufficient evidence to determine the role BlackRock will play in Frontier's delivery of utility services. That role and its effects on Frontier cannot be understood without some information regarding BlackRock's plan for GNI and Frontier. For example, witness Shockley testified that First Reserve had not decided who would be on the GNI board, but that First Reserve would control the GNI board and have a majority of members on it. (T, at p. 159) The Commission has no evidence from BlackRock as to how Blackrock will handle its control of GNI's board. If, for example, BlackRock were to take the same approach as that planned by First Reserve, BlackRock would exercise a substantial amount of control over Frontier through its appointment of the GNI board members.

Further, witness Shockley described the decision-making process that First Reserve would follow in deciding whether to allocate capital to Frontier. In short, he stated that Frontier would make recommendations for capital deployment to GNI, then GNI would make recommendations to the First Reserve board of directors. The First Reserve board would consider such recommendations on an annual basis, as part of its budgeting decisions, except for special projects requiring funding. With respect to special projects, First Reserve's board of directors could call a special meeting to address the capital needs of special projects. Again, the Commission has no evidence from BlackRock as to how Blackrock will handle allocations of capital to Frontier. If BlackRock were to take the same approach as that planned by First Reserve, it would exercise a substantial amount

of control over Frontier through its decisions about when to infuse capital into Frontier, how much capital to allocate to Frontier, and on what terms.

Finally, in their post-hearing Brief the parties rely on the Commission's Order Approving Acquisition of Stock and Requiring Customer Notice, Docket No. W-1000, Sub 14 (December 7, 2012). In that docket, the Commission considered the application of Corix Utilities (Illinois) LLC (Corix), a Delaware limited liability company, to acquire ownership and control of Utilities, Inc. (UI). UI was a utility holding company with six North Carolina regulated water utilities as its subsidiaries. UI was a wholly owned subsidiary of Hydro Star Holding Corp., which was a wholly owned subsidiary of Hydro Star, LLC. British Columbia Management Corporation (BCMC), a Canadian investment management company, was the principal investor in Corix Infrastructure, Inc. (CII). CII owned 100% of Corix, the Applicant. Corix sought Commission approval to acquire 100% of the outstanding membership interests of Hydro Star, LLC. The Commission approved the acquisition of 100% of the membership interests in Hydro Star by Corix. As noted by the parties, the Commission did not require BCMC or CII, the upstream owners of Corix, to become parties to the docket or submit testimony. In their Brief, the parties contend that the proposed merger in this docket is virtually identical to the Corix transaction.

The Commission is not persuaded. The facts in the present docket are distinguishable from those of the Corix transaction. In particular, the upstream ownership of Corix was established at the time of Corix's application to acquire Hydro Star, and, during the pendency of Corix's application and the Commission's decision, there was no change in the upstream ownership of Corix. Thus, Corix already had knowledge of its working relationship with its upstream owner and could testify as to its plans for UI and Hydro Star knowing the relationship and customary business practices between it and its upstream owner. When the Public Staff conducted its investigation of the Corix application, the Public Staff was able to explore the upstream ownership relationships to make its due diligence determinations. It could also be reasonably inferred from the pre-existing parent relationship, that the upstream owner had knowledge of and/or had given permission or approval of the subsidiary's application for merger prior to its being filed with the Commission. When the Commission approved the Corix application, G.S. 62-3(23)(c) provided the Commission assurance of its jurisdiction over upstream parties in place at that time authorized to exercise control over North Carolina operating affiliates to the extent necessary. There is no evidence in the record suggesting that First Reserve had knowledge that BlackRock's ownership and control would not result in changes affecting GNI and Frontier.

The Commission strives to do all that it can to maintain the stability of the public utilities that the Commission regulates. To that end, the Commission needs to know who is in control of the operations of each utility. Further, the Commission needs to ensure as much as possible that each utility has stability in its management and in the people who are making the operations decisions. One situation the Commission wants to avoid is having the control of a utility passed to a new parent company on a frequent basis merely because an opportunity for selling the utility comes along. Witness Shockley testified that First Reserve intended to hold GNI and Frontier as "long term" investments, which he defined as 12 to 15 years, or more. Yet, even before First Reserve acquired ownership

of Frontier, it entered into an agreement that would forego its potential ultimate ownership of GNI and Frontier and give that privilege of ownership to BlackRock. To say the least, this has not given the Commission any comfort about the future stability of Frontier's ownership if the Commission should give its approval for Frontier to be owned by an equity investor.

The Commission does note its awareness of the unverified confidential statement filed by BlackRock on May 8, 2017, but the statement is not competent evidence of record upon which the Commission can base a decision that the public convenience and necessity will be served by approving the pending application. In addition, the statement was not subject to cross-examination or the questions of the Commission. See G.S. 62-65.

Conclusion

The Commission concludes that before it can enter a final order on the proposed merger, BlackRock must be joined as a necessary party to this proceeding. In addition, the Commission needs competent evidence of record from BlackRock on the following:

1. BlackRock's plans for appointing members to serve on GNI's board of directors;
2. The process by which BlackRock will decide when to infuse capital into Frontier, how much capital to allocate to Frontier, and on what terms.
3. BlackRock's intent with regard to its length of ownership of GNI and Frontier.

If BlackRock is in agreement with the testimony provided by the Applicants, it can file a verified statement or affidavit stating its agreement and that First Reserve will be allowed to exercise ownership and control of GNI and Frontier without interference in exactly the way that witness Shockley testified to the Commission. In addition, the statement should also indicate whether BlackRock accepts and agrees to the Regulatory Conditions. If BlackRock is not in agreement with the testimony of witness Shockley and/or there is any appreciable distinction or difference in the manner GNI and Frontier will be governed, operated, owned and controlled with BlackRock as the ultimate owner, BlackRock must make its position known to the Commission by filing either an affidavit or sworn testimony addressing the three subjects enumerated above. In addition, BlackRock should indicate its position regarding the proposed Regulatory Conditions that have been agreed to by the Applicants and Public Staff. The Public Staff will be afforded an opportunity to respond to any BlackRock filing unless the parties determine that a joint filing or stipulation is in order or unless the Public Staff makes a filing stating that it does not plan to file any response.

IT IS, THEREFORE, ORDERED as follows:

1. That BlackRock shall be, and is hereby, joined as a necessary party to this proceeding;

2. That BlackRock shall file a verified statement or affidavit or testimony in accordance with this Order, and specifically addressing the three items of information enumerated above and the proposed Regulatory Conditions;

3. That within ten days from the date of BlackRock's filing of its statement, affidavit or testimony, the Public Staff shall, as it deems appropriate, file responsive comments, an affidavit or testimony, or a statement that it does not plan to make any responsive filing. If the Public Staff desires to cross-examine on BlackRock's filings, it may request a hearing in any responsive filing it makes; and

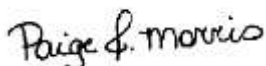
4. That the Chief Clerk shall mail a copy of this Order to BlackRock, Inc., by certified mail addressed to:

BlackRock, Inc.
Attention: Mr. David O'Brien, Managing Director
40 East 52nd Street
New York, New York 10022

ISSUED BY ORDER OF THE COMMISSION.

This the 11th day of July, 2017.

NORTH CAROLINA UTILITIES COMMISSION



Paige J. Morris, Deputy Clerk

Commissioner Don M. Bailey did not participate in this decision.