

The Commonwealth of Massachusetts
DEPARTMENT OF
TELECOMMUNICATIONS AND ENERGY

D.T.E. 04-75

August 27, 2004

Petition of Southern Union Company for authorization and approval pursuant to G.L. c. 164, § 17A, to invest up to \$700 million in CCE Holdings, LLC, a joint venture between Southern Union and an equity partner, GE Commercial Finance Energy Financial Services.

APPEARANCES:

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FOR: SOUTHERN UNION COMPANY
Petitioner

I. INTRODUCTION

On August 4, 2004, Southern Union Company ("Southern Union" or "Company") filed a petition with the Department of Telecommunications and Energy ("Department") for authorization and approval pursuant to G.L. c. 164, § 17A, to invest up to \$700 million in CCE Holdings, LLC ("CCE"), which is a joint venture between Southern Union and an equity partner, GE Commercial Finance Energy Financial Services ("GE Energy Finance.").¹ CCE has entered into a purchase agreement with Enron Corp. and certain of its affiliates (collectively, "Enron") to acquire 100 percent of the equity interests of CrossCountry Energy, LLC ("CrossCountry"), which is a holding company that owns interests in and operates several interstate pipeline facilities.² No person filed for intervenor or limited participant status. The Department docketed the filing as D.T.E. 04-75.

Pursuant to notice duly issued, the Department conducted public and evidentiary hearings at the Department's offices on August 20, 2004. In support of its petition, the Company offered the testimony of: (1) David J. Kvapil, executive vice-president and chief financial officer for Southern Union and (2) Robert Michael Kerrigan, III, corporate counsel and assistant secretary for Southern Union. The evidentiary record includes 23 exhibits and

¹ On September 28, 2000, Southern Union, a Delaware corporation, acquired North Attleboro Gas Company and Fall River Gas Company, and now operates in Massachusetts subject to the Department's jurisdiction under G.L. c. 164, § 1, under a d/b/a name "New England Gas Company."

² The CrossCountry sales transaction is being conducted as part of the Enron bankruptcy proceeding before the United States Bankruptcy Court for the Southern District of New York (Exhs. SU-1, at 6-7; DTE-1-3).

responses to two record requests. On August 24, 2004, the Company submitted a brief in support of its petition.

II. DESCRIPTION OF THE COMPANY'S PROPOSAL

Southern Union seeks authorization and approval pursuant to G.L. c. 164, § 17A, to invest up to \$700 million in CCE, which is a joint venture between Southern Union and GE Energy Finance (Exh. SU-1, at 2). Under the terms of a Limited Liability Company Agreement, Southern Union will enter into an arrangement with GE Energy Finance to acquire a 50 percent equity interest in CCE, which will purchase 100 percent of the equity interests of CrossCountry (Exh. DTE-1-01 [confidential]). On June 24, 2004, CCE entered into a stock purchase agreement with Enron³ to acquire 100 percent of the equity interest of CrossCountry ("Agreement") (*id.*). CrossCountry is a holding company that employs 1,100 people and owns interests in and operates Transwestern Pipeline Company ("Transwestern"), Citrus Corp. ("Citrus"), and Northern Plains Natural Gas Company ("Northern Plains") (*id.*).⁴

Under the Agreement, CCE would acquire 100 percent ownership interest in CrossCountry with the payment of \$2,350,000,000, less assumed Transwestern debt of

³ The parties to the stock purchase agreement are: CCE; Enron Corp.; Enron Operations Services, LLC; Enron Transportation Services, LLC; and EOC preferred, L.L.C. (Exh. SU-2, at 1).

⁴ CrossCountry owns 100 percent of Transwestern, 50 percent of Citrus, and (i) 1.65 percent of the 2.00 percent general partnership and (ii) 1.06 percent of the 98 percent limited partnership interest in Northern Border Partners, L.P. ("Northern Border") (Exh. DTE-1-9). Cross Country's ownership of Northern Borders come through its ownership of Northern Plains (Exh. DTE-1-20, Att. at S-2 - S-3).

approximately \$461,000,000,⁵ plus or minus an adjustment depending on the balance of CrossCountry's cash working capital at the time of closing (Exhs. S-1, at 9-10; SU-2, at § 2.1; DTE-1-19; Tr. at 23-24). CCE's purchase would be financed through an investment made by Southern Union, an investment made by GE Energy Finance, and through the issuance of debt by CCE (Exh. SU-1, at 9-10; Tr. at 12). Southern Union will undertake an equity issuance to raise all or part of the capital needed to fund its portion of the investment (Exh. SU-1, at 9; Tr. at 12). The Company will submit a filing with the Department for approval of that equity issuance (Exh. DTE-1-14).⁶

On June 23, 2004, the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court") established the Agreement (CCE's bid) as the baseline bid, or "stalking horse," in a process in which additional bids can be submitted (Exhs. DTE-1-3; SU-1, at 6; DTE-1-4; DTE-1-20, Att. at SU-2). By virtue of being granted "stalking horse" status, the Agreement was established as the definitive agreement against which other bids will be measured (Exhs. DTE-1-4; DTE-1-6, Att.). A final auction for consideration of all bids will be held on September 1, 2004 (Exhs. SU-1, at 3; DTE-1-6, Att. at 2).

CrossCountry is a recently formed entity that holds energy businesses that provide natural gas transportation services (Exh. DTE-1-20, Att. at S-2). The pipeline system owned

⁵ The assumed Transwestern debt will be non-recourse to Southern Union, that is, it is secured by collateral at the Transwestern level and Southern Union will face no liability for this debt (Exhs. SU-1, at 10; DTE-1-13; Tr. at 8-10).

⁶ The Department will review that filing pursuant to the statutory provisions governing the issuance of securities by gas companies (e.g., G.L. c. 164, §§ 14, 16), and in light of the findings contained in this Order.

or operated by CrossCountry is comprised of approximately 9,700 miles of pipeline having the capacity to transport approximately 8.5 billion cubic feet of natural gas per day, serving customers in 18 states (*id.*; Exh. SU-1, at 3). Transwestern owns and operates 2,400 miles of interstate pipeline transporting natural gas from western Texas, Oklahoma, eastern New Mexico, and the San Juan Basin in northwest New Mexico and southern Colorado primarily to the California market and to pipeline interconnects off the east end of its system (Exhs. DTE-1-20, Att. at S-3; SU-1, at 4). Transwestern has access to three significant gas basins for its supply: the Permian Basin in West Texas and eastern New Mexico, the San Juan Basin in northwestern New Mexico and southern Colorado, and the Anadarko Basin in the Texas and Oklahoma panhandles (Exhs. DTE-1-20, Att. at S-3; SU-1, at 4).

Citrus owns Florida Gas Transmission Company ("FGT"), whose pipeline system currently extends for approximately 5,000 miles from south Texas through the Gulf Coast region to south Florida (Exhs. DTE-1-20, Att. at S-3; SU-1, at 4). FGT has a mainline capacity of 2.1 billion cubic feet per day (Exhs. DTE-1-20, Att. at S-3; SU-1, at 4). FGT's pipeline system primarily receives natural gas from gas basins in the Louisiana and Texas Gulf Coast, Mobile Bay and offshore Gulf of Mexico (Exhs. DTE-1-20, Att. at S-3; S-1, at 4).

Northern Plains is one of the general partners of Northern Border (Exh. SU-1, at 4). Northern Border operates 2,317 miles of interstate pipelines with capacity of 4.3 billion cubic feet per day (Exhs. SU-1, at 4; DTE-1-20, Att. at S-3). Northern Border also has (i) extensive gas gathering operations in the Powder River Basin in Wyoming, (ii) natural gas gathering, processing and fractionation operations in the Williston Basin in Montana and North Dakota,

and the western Canadian sedimentary basin in Alberta, Canada, and (iii) ownership of the only coal slurry pipeline in the United States (Exh. DTE-1-20, Att. at S-3).

In determining its bid for the acquisition of CrossCountry, Southern Union states that it conducted extensive due diligence on the financial operations of the member companies of CrossCountry (Tr. at 30-35). This due diligence included a review of such information as historical financial statements, operational capabilities, contingent liabilities, identified environmental matters, and employee benefits and associated liabilities (id. at 33-34). Southern Union's investment advisor, J.P. Morgan also participated in the due diligence process (id. at 35-36). In the conduct of its due diligence, J.P. Morgan issued to Southern Union's board of directors an opinion that the consideration proposed to be paid by Southern Union for its equity investment in CCE in connection with the proposed purchase of CrossCountry at a price of \$2,350,000,000, less the Transwestern debt amount, was fair to Southern Union from a financial point of view (Exh. DTE-1-1 (Supplemental)).

Southern Union's involvement in CCE's acquisition of CrossCountry is subject to approval under the Hart-Scott-Rodino Antitrust Improvement Act of 1976 ("Hart-Scott-Rodino"), approval from the Missouri Public Service Commission, and approval from the Pennsylvania Public Utility Commission (Exh. DTE-1-7). The waiting period under Hart-Scott-Rodino has expired (id.).⁷ According to Southern Union, the operations of CCE and its

⁷ Under Hart-Scott-Rodino, the acquisition of certain voting securities requires filing notification with the Federal Trade Commission ("FTC") and the Antitrust Division of the Department of Justice ("DOJ"), and the expiration of the statutory waiting period, unless other action is taken by the FTC or the DOJ. 15 U.S.C. §§ 18a(a), (b). The statutory waiting period is 30 days from filing. Id. § 18a(b)(1)(B).

subsidiaries would be regulated by the Federal Energy Regulatory Commission ("FERC") (Exh. DTE-1-8).

III. STANDARD OF REVIEW

Pursuant to G.L. c. 164, § 17A, a gas or electric company must obtain written Department approval in order to "loan its funds to, guarantee or endorse the indebtedness of, or invest its funds in the stock, bonds, certificates of participation or other securities of, any corporation, association or trust" The Department has indicated that such proposals must be "consistent with the public interest," that is, a § 17A proposal will be approved if the public interest is at least as well served by approval of the proposal as by its denial.

Massachusetts Electric Company, D.T.E. 01-104, at 4 (2002); citing Bay State Gas Company, D.P.U. 91-165, at 7 (1992); see Boston Edison Company, D.P.U. 850 (1983).

The Department has stated that it will interpret the facts of each § 17A case on its own merits to make a determination that the proposal is consistent with the public interest. D.P.U. 91-165, at 7. The Department will base its determination on the totality of what can be achieved rather than a determination of any single gain that could be derived from the proposed transactions. Id.; see D.P.U. 850, at 7. The Department also found that the public interest standard best accommodates the Department's interest in protecting the utility's ratepayers from the adverse effects of unwarranted § 17A transactions and a utility's interest in having flexibility in a changing marketplace to meet long term objectives of its ratepayers and shareholders. D.P.U. 91-165, at 7; Boston Edison Company, D.P.U. 97-17, at 6 (1997).

Thus, the Department's analysis must consider the overall anticipated effect on ratepayers of the potential harms and benefits of the proposal. D.P.U. 91-165, at 8. The effect on ratepayers may include consideration of a number of factors, including, but not limited to: the nature and complexity of the proposal; the relationship of the parties involved in the underlying transaction; the use of funds associated with the proposal; the risks and uncertainties associated with the proposal; the extent of regulatory oversight on the parties involved in the underlying transaction; and the existence of safeguards to ensure the financial stability of the utility. Id.

IV. ANALYSIS AND FINDINGS

The Department's review of an investment must consider the overall anticipated effect on ratepayers of the potential harms and benefits of the proposal. With regard to potential benefits to customers, Southern Union states that by acquiring the equity interests of CrossCountry, and thereby becoming a larger company, the Company will achieve operational efficiencies in providing corporate services to its operating divisions (Tr. at 27). These efficiencies will result in fixed overhead costs being allocated over a larger operation, allowing customers in Massachusetts to benefit in future rate cases because of reduced corporate overhead costs (id.). At the same time, the record shows that the acquisition of 100 percent of the equity interests of CrossCountry will have no negative effect on the Company's ability to provide financial and corporate management activities to its local gas distribution companies (Exh. SU-1, at 10-11; Tr. at 28). The Company has sufficient resources so that its local gas distribution companies would not lose access to financial and management resources through

the investment in CCE (Exh. SU-1, at 10-11; Tr. at 28). In addition, the Company will have greater purchasing power, allowing it to obtain larger nationwide discounts to purchase plant, materials and other commodities, with the benefit of the discounts accruing directly to local distribution companies (Exh. SU-1, at 10-11; Tr. at 28). The Company also stated that the acquisition of CrossCountry is expected to improve Southern Union's capital structure and expand the Company's access to capital markets (Exh. SU-1, at 11-12; Tr. at 15-16).⁸ Furthermore, the resulting economies of scale can produce cost reductions in such areas as information technology (Tr. at 27).⁹

With regard to the extent of regulatory oversight on the parties, the operations held by CrossCountry are regulated by FERC (Exhs. SU-1, at 4-5; DTE-1-20, Att. at S-3). As regulated entities, the companies composing CrossCountry represent a stable investment with very predictable rates of earnings (Exh. SU-1, at 10-12). Therefore, Southern Union's use of funds for an investment in CCE is consistent with the public interest as required by § 17A.

As noted above, the Department has determined that, under G.L. c. 164, § 17A, a petitioner must demonstrate that its proposal is consistent with the public interest and that a petitioner would meet this standard if, upon consideration of all of the significant aspects of a

⁸ The Company stated that with its increase in size from its recent purchase of Panhandle Energy, there was increased competition for a debt issuance with a decrease of several basis points from the expected issuance rate (Tr. at 27).

⁹ The Company anticipates that its recent acquisition of Panhandle will provide savings of \$15,000,000 in corporate information technology costs (RR-DTE-2, Att. at 27). Savings for this same business function would be expected from the acquisition of CrossCountry as well (Tr. at 27).

proposal, the public is at least as well served by approval of the proposal as by its denial.

See D.P.U. 91-165, at 7. The Department has further noted that the application of the public-interest standard in a § 17A case is based on the totality of what can be achieved by the proposal, rather than a determination of any single gain (or loss) that might be derived from the proposed transactions. Id.

In this case, the record shows that, after balancing all of the factors involved in the investment, the investment causes no net harm to the ratepayers and customers will be at least as well served by the Department's approval of the proposed investment as by its denial. After weighing the overall potential benefits and harms of Southern Union's proposed investment in CCE, the Department finds that the Company's proposal is consistent with the public interest. Accordingly, the Department approves the Company's investment request under G.L. c. 164, § 17A.

The Department notes that Southern Union's investment in CCE is based on CCE being designated the winning bidder for CrossCountry. Therefore, the Department's approval of Southern Union's investment of up to \$700,000,000 in CCE will be void and of no effect if CCE's bid for CrossCountry is not approved by the Bankruptcy Court.¹⁰ Furthermore, the Department's determination in this Order is not in any way to be construed as a ruling relative

¹⁰ On August 26, 2004, Southern Union filed with the Department a financing petition under G.L. c. 164, § 14, for approval of the issuance of securities to fund its portion of the investment in CCE. That petition has been docketed by the Department for investigation as D.T.E. 04-83. The Department's approval herein shall not be considered dispositive of the Department's ruling on the Company's filing in D.T.E. 04-83.

to the appropriate ratemaking treatment to be accorded any assets acquired, or any costs associated with the proposed investment transaction.

V. ORDER

Accordingly, after due notice, hearing, and consideration, the Department:

VOTES: That the investment of up to \$700,000,000 in CCE Holdings, LLC by Southern Union Company is consistent with the public interest as required by G.L. c. 164, § 17A; and it is

ORDERED: That the investment by Southern Union Company of up to \$700,000,000 in CCE Holdings, LLC is approved and authorized; and it is


FURTHER ORDERED: That the approval and authorization of the investment by Southern Union Company of up to \$700,000,000 in CCE Holdings, LLC granted hereunder shall be void and of no effect, if the bid of CCE Holdings, LLC for CrossCountry Energy, LLC is not approved by the United States Bankruptcy Court for the Southern District of New York.

By Order of the Department,

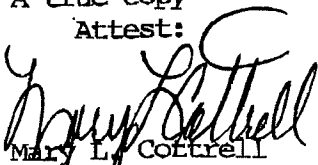

Paul G. Afonso, Chairman


W. Robert Keating, Commissioner


Eugene J. Sullivan, Jr., Commissioner


Deirdre K. Manning, Commissioner

A true copy
Attest:


Mary L. Cottrell
Secretary

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).