

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KENTUCKY ENERGY TRANSMISSION CORPORATION, )  
INC. )  
 ) CASE NO. 92-177  
 )  
\_\_\_\_\_)  
 )  
ALLEGED VIOLATION OF KRS 278.160 )

O R D E R

During the course of proceedings in Commission Case No. 90-290,<sup>1</sup> a lease purchase agreement has been filed into the record which indicates that Kentucky Energy Transmission Corporation ("Kentucky Energy") has entered into a transportation agreement to transport natural gas across pipelines purportedly owned by Kentucky Energy on behalf of a local distribution company, Burkesville Gas Company, Inc. ("Burkesville Gas"). The agreement to transport gas between Kentucky Energy and Burkesville Gas is attached hereto and incorporated herein as Appendix A. The transportation agreement provides that Burkesville Gas will pay a charge of 40 cents per Mcf for all gas transported through the Kentucky Energy line.

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<sup>1</sup> Case No. 90-290, Investigation to Determine Whether an Adequate Means for Delivery of Gas is Available to Ken-Gas of Kentucky, Inc.

A review of Commission records indicates Kentucky Energy currently has no tariffs on file with the Commission. Pursuant to a capital lease agreement entered into between Kentucky Energy, Burkesville Gas, and other parties which have become an issue in Commission Case No. 92-178, the Kentucky Energy pipeline has been used as a transportation line into the Burkesville Gas distribution system since the end of January 1992. As such, a prima facie showing has been made that Kentucky Energy should be designated as an intrastate pipeline which is operating as a transporting utility and, pursuant to KRS 278.160 and Administrative Case No. 297,<sup>2</sup> should be required to have tariffs on file with the Commission.

KRS 278.160 provides that each utility under the jurisdiction of the Commission shall file with the Commission schedules showing all rates and conditions for service established by it and collected or enforced and further that no utility shall charge or collect a greater or less compensation for any service rendered than that which is contained in its filed schedules. After reviewing the transportation agreement and being otherwise sufficiently advised, the Commission finds that a prima facie showing has been made that:

1. Kentucky Energy is engaged in the transporting or conveying of gas by pipeline to or for the public for compensation

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<sup>2</sup> Administrative Case No. 297, An Investigation of the Impact of Federal Policy on Natural Gas to Kentucky Consumers and Suppliers.

and as such is an intrastate transportation utility pursuant to KRS 278.010.

2. Kentucky Energy entered into and has been transporting gas on behalf of Burkesville Gas pursuant to a transportation agreement since approximately January 25, 1992.

3. Kentucky Energy as a transporting utility under this Commission's jurisdiction should be required to file, pursuant to KRS 278.160, appropriate tariffs which reflect all rates charged and conditions for service.

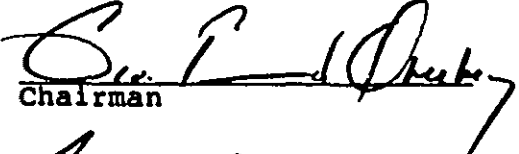
IT IS THEREFORE ORDERED that:

1. Kentucky Energy, represented by counsel, shall appear at a hearing scheduled for June 16, 1992, at 10:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky, and show cause if any it can, why it should not be penalized pursuant to KRS 278.990(1) for operating as an unauthorized utility by its failure to file tariffs in violation of KRS 278.160.


2. Kentucky Energy shall have the option of either filing a written response to the allegations contained herein within 20 days of the date of this Order or filing a response which includes a tariff in compliance with Commission rules and regulations. In the event Kentucky Energy comes into compliance with requirements herein and files all information required by the Commission's statutes and regulations, the hearing above will be cancelled.

Done at Frankfort, Kentucky, this 1st day of May, 1992.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director, Acting

**TRANSPORTATION AGREEMENT**

This Agreement, made and entered into this twenty-third day of December, 1991, by and between Kentucky Energy Transmission, Inc., a Kentucky corporation (herein called "KET") and Burkesville Gas Company, Inc. (herein called "BGC"),

**W I T N E S S E T H:**

WHEREAS,

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, the parties do covenant and agree as follows:

**DEFINITIONS**

The following definitions shall apply hereunder:

**Day.** The term "day" shall mean a period of time beginning at 8:00 a.m., local time in Cumberland County, Kentucky, on each calendar day and ending at 8:00 a.m., local time in Cumberland County, Kentucky, on the next succeeding calendar day.

**Month.** The term "month" shall mean a period of time beginning at 8:00 a.m. on the first day of a calendar month and ending at 8:00 a.m., on the next succeeding calendar month

**Contract Year.** The term "contract year" shall mean each period of twelve (12) consecutive months during the term hereof commencing at 8:00 a.m. on the first day of the month next following the first delivery of gas hereunder or any anniversary of such day during the term hereof.

**MCF.** The term "MCF" shall mean one thousand cubic feet of gas measured at a base temperature of sixty degrees Fahrenheit (60 degrees F), and at a pressure base of fourteen and sixty-five hundredths (14.65) psia and corrected for deviation from ideal gas behavior.

**Gas.** The term "gas" shall mean natural gas as produced from wells classified as gas wells or oil wells.

**BTU.** The term "BTU" shall mean British Thermal Unit.

**MMBTU.** The term "MMBTU" shall mean no less than one million (1,000,000) British Thermal Units.

**Psig.** The term "psig" shall mean pounds per square inch gauge.

**Psia.** The term "psia" shall mean pounds per square inch absolute.

## ARTICLE I

### SCOPE OF AGREEMENT

Subject to the terms, conditions and limitations hereof, KET agrees to receive from any third party source on the account of BGC or for the account of BGC for transportation quantities of natural gas tendered on behalf of BGC on any day at the Points of Receipt; provided however, that any third party on behalf of BGC shall not tender, without the prior consent of KET, at any Point of Receipt on any day a quantity of natural gas in excess of the applicable Maximum Daily Receipt Obligation for such Point of Receipt and provided further that no third party on behalf of BGC shall not tender at all Points of Receipt on any day or in any year a cumulative quantity of natural gas in excess of the following quantities of natural gas plus Applicable Shrinkage:

Maximum Daily Transportation Quantity (MDTQ) 1,000 mcf  
Annual Transportation Quantity (ATQ) 100,000 mcf

KET agrees to transport and deliver to or for the account of BGC at the Point(s) of Delivery and BGC agrees to accept or cause acceptance of delivery of the Equivalent Quantity received by KET on any day; provided however, KET shall not be obligated to deliver at any Point of Delivery on any day a quantity of natural gas in excess of the applicable Maximum Daily Delivery Obligation.

**A. Quality.** It is BGC's sole responsibility and expense to deliver gas to be transported under the terms of this Agreement conforming to the quality specifications of BGC's end users, provided, however, that such gas shall at all times conform to the following minimum specifications at the Point(s) of Delivery:

- (i) The gas shall be commercially free from dust, gum, gum-forming constituents, gasoline, free water and other liquids and solids which may become separated from the gas.
- (ii) The gas shall not at any time have an oxygen content in excess of one percent (1%) by volume and KET shall make every reasonable effort to keep the gas free of oxygen.
- (iii) The gas shall not contain more than one (1) grain of hydrogen sulphide per one hundred (100) cubic feet.
- (iv) The gas shall not contain more than twenty (20) grains of total sulphur (including the sulphur in any hydrogen sulphide and mercaptans) per one hundred (100) cubic feet.
- (v) The gas shall not at any time have a carbon dioxide content in excess of two percent (2%) by volume.
- (vi) The gas shall have a total heating value per cubic foot of not less than nine hundred fifty (950) British thermal units.
- (vii) The water content of the gas shall not be more than seven (7) pounds per one million (1,000,000) cubic feet.
- (viii) KET agrees to odorize gas in proper amounts and frequencies at no cost to BGC.

## B. Metering Equipment and Testing.

(i) The metering facilities to measure the volumes of gas delivered at the Point(s) of Delivery shall be owned by KET and maintained and operated by KET or its designee. The metering facilities to measure the volumes of gas delivered at the Point of Redelivery shall be owned, maintained and operated by BGC. KET may, however, install and maintain such check meters and related facilities as it deems necessary immediately upstream from the Point of Redelivery.

(ii) Orifice meters installed in such measuring stations shall be operated in accordance with the American National Standard Orifice Metering of Natural Gas Publication ANSI/API 2530, and any subsequent modification and amendment thereof and shall include the use of flange connections, and where necessary, straightening vanes and pulsation dampening equipment.

(iii) The parties shall have the right to have representatives present at the time of any installing, reading, cleaning, changing, repairing, inspecting, testing, calibrating, or adjusting done in connection with the other's measuring equipment used in measuring or checking the measurement of deliveries of gas under this Agreement. The records from such measuring equipment shall remain the property of the party operating the equipment, but upon request each party will submit to the other its records and charts, together with calculations therefrom, for inspection and verification, subject to return within ten (10) days after receipt thereof.

(iv) The accuracy of measuring equipment at the Point(s) of Delivery shall be verified by KET at reasonable intervals and if so requested, in the presence of representatives of BGC, but KET shall not be required to verify the accuracy of such equipment more frequently than once in any thirty (30) day period. In the event BGC desires a special test of any measuring equipment, 24-hour advance notification shall be given KET and the parties shall cooperate to secure a prompt verification of the accuracy of such equipment. The expense of any such special test, if requested, shall be borne by BGC if the measuring equipment tested is found to be in error by not more than two (2) percent. If, upon test, any measuring equipment, including calorimeters, is found to be in error by not more than two (2) percent, previous records of such equipment shall be considered accurate in computing deliveries of gas, but such equipment shall be adjusted at once to record accurately.

If, upon test, any measuring equipment shall be found to be inaccurate by an amount exceeding two (2) percent, at a recording corresponding to the average hourly rate of flow for the period since the last preceding test, then any previous recording of such equipment shall be corrected to zero (0) error for any period which is known definitely; but in case the period is not known or agreed upon, such correction shall be for a period extending over one-half (1/2) of the time elapsed

since the last test, not exceeding a correction period of sixteen (16) days.

(v) In the event a meter is out of service, or recording inaccurately by an amount exceeding two (2) percent, the volume of gas delivered shall be estimated as follows:

1. By using the registration of any check meter or meters, if installed and accurately registering; or in the absence of (1), then,

2. By correcting the error if the percentage of error is ascertainable by calibration, tests, or mathematical calculation; or, in the absence of both (1) and (2), then,

3. By estimating the quantity based upon deliveries during periods under similar conditions when the meter was registering accurately.

(vi) KET shall retain and preserve for a period of at least two (2) years all test data, charts and other similar records.

(vii) KET's reading of official meter charts shall be deemed correct unless such readings differ by more than one (1) percent from readings made by BGC or BGC's agents in connection with a scheduled audit of such charts. If BGC does not concur with KET's reading of official meter charts, BGC shall notify KET whereupon KET shall be afforded an opportunity during thirty (30) days to reread such charts. If the readings of such charts remain disputed, the parties shall make a joint reading of the official meter charts which shall be final as to the quantity so delivered during the period covered by the subject charts.

**C. Measurements.** The measurements of the quantity and quality of all gas delivered at the Delivery Point(s) hereunder shall be conducted in accordance with the following:

(i) Unit of Volume: The unit of volume for measurement shall be one (1) cubic foot of gas at a temperature base of sixty (60) degrees Fahrenheit and at a pressure base of fourteen and sixty-five hundredths (14.65) psia.

(ii) Volume Measurement: The volume of gas delivered shall be measured by orifice meter installed and operated as prescribed under the provisions of American National Standard Orifice Metering of Natural Gas, Publication ANSI/API 2530, with any subsequent amendments or revisions. Computations for gas measurement shall also be made in accordance with this publication. Volume measurement by means other than that described above will be an exception to the Agreement which must be approved by all parties concerned.

(iii) Temperature Measurement: The temperature of the gas shall be determined by a recording thermometer so installed that it may record the temperature of the gas flowing through the meters. The average of the record to the nearest one (1) degree Fahrenheit, obtained while gas is being delivered, shall



be the applicable flowing gas temperature for the period under consideration.

(iv) Specific Gravity Measurement: The specific gravity of the gas shall be determined by such methods as may be mutually agreed upon. Sampling shall occur at a suitable point on the facilities to record representative specific gravity of the gas being metered. If the parties do not consider the installation of a recording gravitometer necessary, spot samples or continuous sampling using standard type specific gravity methods may be used. If the spot sample or continuous sampling method is used, the specific gravity of the gas delivered hereunder shall be determined once a month from a gas analysis. With any method the result shall be obtained to the nearest one-thousandth (0.001) and should be applied during the calendar month for the determination of gas volumes delivered.

(v) Assumed Atmospheric Pressure: The average atmospheric pressure shall be assumed to be fourteen and four-tenths pounds per square inch absolute (14.4 psia).

(vi) Assumed Orifice Thermal Expansion Factor and Location Factor: The Orifice Thermal Expansion Factor and the Location Factor shall be assumed to be one (1.0), unless otherwise agreed to be all parties to use a different value. Factors other than one (1.0) will be determined in accordance with ANSI/API 2530, hereinabove identified.

(vii) Other Tests: Other tests to determine water content, sulfur, and the like in the gas shall be conducted whenever requested by either party at the requesting party's expense and shall be conducted in accordance with standard industry testing procedures.

**D. Billing, Payment and Notice.** KET will use its best efforts to furnish to BGC on or before the tenth (10th) day of each calendar month a gas allocation statement setting forth, in terms of MCF, the total quantity of gas received and the Point(s) of Delivery, the total quantity of gas redelivered hereunder to BGC at the Point of Redelivery during the immediately preceding calendar month, and will render an invoice setting forth the transportation fees payable to KET. BGC agrees to pay KET the full amount payable according to such statement on or before fifteen (15) days following the receipt thereof by BGC. Should BGC fail to timely pay part or all of the amount of any billing for services rendered or for any other charges payable hereunder, interest shall accrue on the unpaid balance at the rate of twelve (12%) per annum from the due date until date of payment. If such failure to pay continues for thirty (30) days after payment is due, KET, in addition to any other remedy it may have, may suspend further receipt and delivery of gas until such amount including interest, is paid.

It is further agreed that if it is ultimately determined through judicial proceedings that KET is entitled to collect from BGC a sum due and owing for services provided under this Agreement, in addition to the payment of said amount from BGC, KET shall also be entitled to an award of interest thereon at the above-stated contractual rate of twelve percent (12%) per annum from the date due

until the date paid, as well as all costs and attorney fees incurred by KET in such legal proceeding. Each party hereto or its representative shall have the right at all reasonable times to examine the books and records of the other party to the extent necessary to verify the accuracy of any statement, charge, computation or demand made under or pursuant to this Agreement. Any statement shall be final as to all parties unless questioned within one (1) year after payment thereof has been made. Any notice, request, demand, statement, payment or other correspondence shall be mailed to the post office address of each of the parties hereto, hereinafter states, or to such other address as such party may hereafter designate to the other in writing:

Burkesville Gas Company, Inc  
119 Upper River  
Burkesville, Kentucky 42717

Kentucky Energy Transmission, Inc.  
Route 3, Box 26A Highway 127  
Albany, Kentucky 42602

**E. Taxes.** KET agrees to pay or cause to be paid during the term of this agreement all Taxes (as defined in paragraph (i) below) effective as of the date of this Agreement, lawfully levied and imposed upon KET with respect to the transportation of gas and associated facilities related thereto.

(i) The term "Taxes" as used herein shall mean all taxes, including, but not limited to, gross receipts tax, licenses, fees and other charges levied, assessed or made by any governmental authority on the act, right or privilege of transporting, handling or delivering gas which is measured by the volume, heat content, value or sales price of the gas or transportation fee levied upon and/or paid by BGC with respect to the gas delivered hereunder. The term "Taxes" as used herein does not include and expressly excludes all gross production, excise and severance taxes, ad valorem, capital stock, income or excess profit taxes, general franchise taxes imposed on corporations on account of their corporate existence or on their right to do business within the state as foreign corporations and similar taxes chargeable to KET.

**F. Assignment.** This Agreement shall bind and benefit the parties hereto and their respective successors and assigns, provided that no conveyance or transfer of any interest of either party shall be binding on the other party until such other party has been furnished with written notice and a true copy of such conveyance or transfer.

## G. Miscellaneous.

(i) This Agreement contains the entire agreement between the parties hereto on the date hereof, respecting the subject matter hereof, and there are no prior or contemporaneous agreements or representations affecting such subject matter other than those herein expressed.

(ii) It is further agreed that no modification or change herein shall be enforceable unless reduced to writing and executed by both parties.

(iii) No waiver by either party hereto of any one or more defaults by the other in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any future default or defaults whether of a like or different character.

(iv) All operations conducted pursuant to this Agreement are subject to all present and future laws of the State of Kentucky and to all orders, rules and regulations of any State or federal regulatory body having jurisdiction. This Agreement shall be construed, enforced and performed in accordance with the laws of the State of Kentucky. If any provision hereof conflicts with such laws, then to the extent of such conflict this Agreement shall be deemed modified to conform therewith.

(v) The provisions of this Agreement shall not impart rights enforceable by any person, firm or organization not a party or not bound as a party, or not a successor and/or assignee of a party bound to this Agreement.

(vi) KET shall at all times maintain the transportation lines used to transport gas on behalf of BGC from the point of receipt to the point of delivery and shall covenant with BGC that the gas supply shall not be interrupted as long as a supplier has supplied gas at the point of receipt on behalf of BGC that would otherwise be acceptable under the specifications of this agreement for transportation to the point of delivery. If such interruption occurs for a period of 24 consecutive hours, then BGC shall notify KET of such interruption and if the matter has not been cured within an additional 24 hours, after receipt of notice thereof, BGC may, at its option, declare KET to be in default and pursue all available remedies for such default as may apply under Kentucky law.

## ARTICLE II

### TERM OF AGREEMENT

This Agreement shall commence upon completion of the BGC's financing to acquire the natural gas system in Burkesville and shall continue in force and effect [for a term of one contract year (Primary Term); provided, however, the Primary Term shall be automatically extended by one year hereunder and by one year on each subsequent anniversary for a total of twenty-five (25) years]. This Agreement may be terminated by either KET or BGC upon twelve (12) month's prior written notice. This Agreement may be

terminated at any time by KET in the event BGC fails to pay part or all of the amount of any bill for service hereunder and such failure continues for thirty (30) days after payment is due; provided KET gives ten (10) days prior written notice to BGC of such termination and provided further such termination shall not be effective if, prior to the date of termination, BGC either pays such outstanding bill or furnishes a good and sufficient surety bond guaranteeing payment to KET of such outstanding bill.

**ARTICLE III**  
**RATE SCHEDULE**

BGC shall pay KET, for all service rendered hereunder in the period stated, applicable prices established under KET's Rate Schedule, attached as Exhibit 1, as same may hereafter be legally amended or superseded.

BGC agrees that KET shall have the unilateral right to file with the appropriate regulatory authority and make changes effective in the rates and charges applicable to service pursuant to KET's Rate Schedule. KET agrees that BGC may protest or contest the aforementioned filings, or may seek authorization from duly constituted regulatory authorities for such adjustments.

**ARTICLE IV**  
**POINT(S) OF RECEIPT**

The Point(s) of Receipt at which KET shall receive gas for transportation under this rate schedule specifying for each Point of Receipt the Maximum Daily Receipt Obligation and Delivery Pressure limitations as contemplated under the general terms and conditions.

Point of Receipt	Maximum Daily Receipt	Receipt Pressure Limit
Metcalf County M & R Station #2536	1,000 mcf	1,000 lbs psi

## ARTICLE V

### POINT(S) OF DELIVERY

Natural gas to be delivered by KET to BGC hereunder shall be delivered on the outlet side of the measuring station(s) at or near the following point(s), with the Maximum Daily Delivery Obligation and the Delivery Pressure Obligation indicated below for each such Point of Delivery as contemplated under the General Terms and Conditions:

Point of Delivery	Maximum Daily Delivery Obligation	Delivery Pressure Obligation
Burkesville City Gate	2,000 mcf	98 Lbs psig
Any Point Along the KET Transmission Line, as Determined at a Future Date	5,000 mcf	98 Lbs psig

## ARTICLE VI

### QUALITY

All natural gas tendered for transportation to KET for the account of BGC at the Point(s) of Receipt shall conform to the quality specifications set forth in Section 4.6 of KET's General Terms and Conditions. KET may refuse to take delivery of any gas for transportation which does not meet such quality provisions.

## ARTICLE VII

### ADDRESSES

Any notice, request, demand, statement, bill or payment provided for in this Agreement, or any notice which any party may desire to give to the other, shall be in writing and shall be considered as duly delivered when mailed by registered, certified, or regular mail to the post office address of the parties hereto, as the case may be, as follows:

(a) KET:  
Kentucky Energy Transmission, Inc.  
Route 3 Box 26A Highway 127  
Albany, Kentucky 42602

(b) BGC:  
Burkesville Gas Company, Inc.  
119 Upper River Street  
Burkesville, Kentucky 42717

or such other address as either party shall designate by formal written notice.

**ARTICLE VIII**

**EXCLUSIVITY**

BGC shall have the exclusive right for the term of this Agreement to tap the existing KET transmission line for the purpose of retail sales to residential, commercial, industrial, and agricultural users. Nothing in Article VIII will restrict KET from making other connections or supplying natural gas to outlying areas. KET shall give right of first refusal to BGC for outlying areas. KET does herein agree to enter into a Transportation Agreement with BGC for the purpose of supplying natural gas to the City of Marrowbone and its surrounding areas.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective Presidents, Vice Presidents or other duly authorized agents and their respective corporate seals to be hereto affixed and attested by their respective Secretaries or Assistant Secretaries, the day and year first above written.

KENTUCKY ENERGY TRANSMISSION, INC.

BURKESVILLE GAS COMPANY, INC.

BY: \_\_\_\_\_

BY: \_\_\_\_\_

ATTEST: \_\_\_\_\_

ATTEST: \_\_\_\_\_

EXHIBIT A

DATED: December 23, 1991

TO THE SERVICE AGREEMENT BETWEEN  
KENTUCKY ENERGY TRANSMISSION, INC. ("KET") AND  
BURKESVILLE GAS COMPANY, INC. ("BGC") POINTS OF RECEIPT

Transportation Charge: 40¢ per mcf

In no way shall any successive renewals of the term of this Agreement cause the Transportation Charge to exceed \$1.00 per mcf.

Firm Points not Subject to Reduction Pursuant to Receipt

Point of Receipt Description	Maximum Daily Receipt Obligation*	Measurement Responsibilities
City Gate Meter #2642 End of Church Street	1,000 mcf	BGC

plus applicable shrinkage