

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF NATURAL GAS	)	
SERVICES, LLC FOR INITIAL RULES,	)	CASE NO.
REGULATIONS, AND RATES FOR FURNISHING	)	2021-00390
GAS SERVICE PURSUANT TO KRS 278.485	)	

ORDER

On September 24, 2021, Natural Gas Services, LLC (Natural Gas Services) filed a proposed tariff to establish initial rules, regulations, and rates to serve “farm tap” customers<sup>1</sup> pursuant to KRS 278.485 and Commission regulation 807 KAR 5:026, which govern natural gas gathering systems that provide services to retail customers who tap onto such systems (farm tap systems). Natural Gas Services proposed an effective date of October 24, 2021. On October 18, 2021, the Commission suspended the effective date of Natural Gas Services’ proposed tariff for five months, up to and including March 23, 2022, and initiated this proceeding to investigate the reasonableness of the proposed tariff.

The October 18, 2021 Order also established a procedural schedule. Natural Gas Services responded to three rounds of discovery from Commission Staff<sup>2</sup> and participated

---

<sup>1</sup> Letter from Natural Gas Services which accompanied the tariff filing (filed Sep. 24, 2021), Natural Gas Services uses the terms “farm tap customer” and “farm tap service,” but does not expressly provide that its tariff filing is made pursuant to KRS 278.485 or 807 KAR 5:026. Monte Hay signed the letter and the tariff sheets as “Monte Hay, Managing Member.”

<sup>2</sup> Natural Gas Services response to Commission Staff’s First Request for Information (Response to Staff’s First Request) (filed Nov. 29, 2021); Natural Gas Services response to Commission Staff’s Second Request for Information (Response to Staff’s Second Request) (filed Dec. 22, 2021); Natural Gas Services response to Commission Staff’s Third Request for Information (Response to Staff’s Third Request) (filed Feb. 2, 2022). The Commission notes that Natural Gas Services filed a motion for leave to file its Response

in two informal conferences.<sup>3</sup> Finally, Natural Gas Services filed written responses<sup>4</sup> to a list of topics Commission Staff attached as an Appendix to its Notice of an Informal Conference and the direct testimony of Monica Sturgill.<sup>5</sup> There are no intervenors in this matter. On February 2, 2022, Natural Gas Services filed a request that this matter be decided on the evidentiary record. This matter now stands submitted for a decision on the written record.

### LEGAL STANDARD

The Commission has exclusive jurisdiction over the regulation of rates and services of utilities in Kentucky,<sup>6</sup> including natural gas distribution companies. KRS 278.190 permits the Commission to investigate any schedule of new rates to determine its reasonableness.

---

to Staff's Third Request out of time because technical difficulties resulted in the filing of the response being made on February 2, 2022, instead of the date the response was due, February 1, 2022. The Commission has not previously addressed this motion but does so here and finds good cause exists to grant Natural Gas Services' motion to file out of time. However, the Commission cautions counsel to more closely observe the deadlines set by the Commission in the future and make whatever adjustments necessary to ensure timely filing of requested information.

<sup>3</sup> See Commission Staff's Notice of Informal Conference (filed Feb. 16, 2022); Intra-Agency Memorandum Regarding the Informal Conference of February 18, 2022 (filed Feb. 23, 2022); Commission Staff's Notice of Informal Conference (filed Feb. 8, 2022); Intra-Agency Memorandum Regarding the Informal Conference of March 9, 2022 (filed Mar. 10, 2022); and Intra-Agency Memorandum Addendum (filed Mar. 11, 2022). Informal conferences were held via teleconference on February 18, 2022, and March 9, 2022. Natural Gas Services was provided with a list of topics to be discussed in advance of each conference. These lists are attached as appendices to the Staff Notices.

<sup>4</sup> Natural Gas Services response to Commission Staff's Appendix to Notice (Response to Staff's Appendix Request) (filed March 3, 2022),

<sup>5</sup> Direct Testimony of Monica Sturgill (Sturgill Direct) (filed Mar. 15, 2022). The Commission notes this testimony was not verified at the time of filing, and therefore did not conform to Commission regulation 807 KAR 5:001, Section 9(7), which requires that all testimony given before the Commission to be given under oath or affirmation. However, verification of the testimony was subsequently filed, and the Commission has considered the content of Ms. Sturgill's testimony along with the entire evidentiary record.

<sup>6</sup> KRS 278.040(2).

The Commission also has limited jurisdiction to regulate the retail rates of gas pipeline companies that do not meet the definition of a utility but provide limited retail gas service pursuant to KRS 278.485. This statute requires every company obtaining natural gas from producing wells located within the state to furnish retail gas service to owners of property located within one-half air mile of one of the company's wells or gathering lines by direct tap, known as a farm tap, on the operator's piping. A gas producer or gathering line operator that provides only farm tap service is not a utility as that term is defined in KRS Chapter 278 because service is not furnished to the public but is restricted to owners of property near the production or gathering facilities.

As to the rates that gas pipeline companies providing farm tap service may charge, KRS 278.485 in pertinent part provides only that "[t]he gas service shall be furnished at rates and minimum monthly charges determined by the Public Service Commission." Commission regulation 807 KAR 5:026, Section 1(4) defines "gas company" as the owner of any producing gas well or gathering line.

There is no language in KRS 278.485 prescribing a method of review for initial farm tap rates. Commission regulation 807 KAR 5:026, Section 9, in pertinent part provides that "[e]ach gas company shall charge rates filed with and approved by the Commission in accordance with KRS Chapter 278 and 807 KAR Chapter 5."<sup>7</sup> This regulation also prescribes a procedure for a gas company that offers service pursuant to KRS 278.485 to request an adjustment of existing rates through a proposed tariff submitted at least 60 days prior to its proposed effective date.<sup>8</sup>

---

<sup>7</sup> 807 KAR 5:026, Section 9(1).

<sup>8</sup> 807 KAR 5:026, Section 9(1)(a) through 807 KAR 5:026, Section 9(4).

## BACKGROUND

Natural Gas Services is a Kentucky limited liability company and Hay Exploration, Inc. (Hay Exploration) is a Kentucky corporation.<sup>9</sup> Neither entity is a utility as defined in KRS 278.010(3). The two entities share common ownership, but otherwise claim to be unaffiliated.<sup>10</sup> Hay Exploration owns the gathering lines and wells<sup>11</sup> to which the farm tap connections and meters owned by Natural Gas Services are attached.<sup>12</sup> Hay Exploration provided farm tap services to these customers previously without having filed rates for that service with the Commission.<sup>13</sup> Natural Gas Services stated that it “acquired” farm taps from Hay Exploration, and has been serving customers associated with the farm taps since August 2021 but provided no documentation of that acquisition.<sup>14</sup> However, Natural Gas Services stated that it has not billed customers for natural gas.<sup>15</sup>

Natural Gas Services stated that the farm taps in the system range from 2 to 30 years old; that it has, to date, replaced 80 percent of the meters in the system; and that it plans to replace the remaining meters by the end of 2022.<sup>16</sup> Natural Gas Services initially stated that it assumed to be servicing 110 farm tap customers in Elliott, Morgan, and

---

<sup>9</sup> Response to Staff’s Third Request, Item 9a.

<sup>10</sup> *Id.*

<sup>11</sup> Response to Staff’s Appendix Request, Item 5; Response to Staff’s First Request, Items 13 and 14; Sturgill Direct, at 2-3.

<sup>12</sup> *Id.*

<sup>13</sup> Response to Staff’s Second Request, Item 15.

<sup>14</sup> Response to Staff’s Third Request, Item 7.

<sup>15</sup> Response to Staff’s First Request, Item 10, and Response to Staff’s Second Request, Item 11.

<sup>16</sup> *Id.*, Item 14.

Lawrence counties in Kentucky.<sup>17</sup> In its response to Staff's First Request, Item 13, Natural Gas Services provided maps that indicated it also owned farm taps located in Johnson County, Kentucky. Natural Gas Services later clarified that it owns farm taps and meters in Johnson, Elliott, Morgan, and Lawrence counties, Kentucky.<sup>18</sup> Natural Gas Services could not confirm that it only provides service to the owners of property on or over which any producing well or gas gathering pipeline is located, or the owners of real estate whose property and point of desired service is located within one-half air-mile of the producing gas well or gas gathering pipeline as it believes that the existing farm taps have been extended or divided to provide service to more than one customer per farm tap.<sup>19</sup> Some of the farm tap customers in the system receive free gas, but Natural Gas Services indicates that it intends to charge the rates in the tariff to other customers. However, the record is not clear on how many customers are receiving free gas, and the tariff does not provide clarity regarding how and when those customers might be moved from free service to services provided under the tariff.<sup>20</sup>

Natural Gas Services stated that it does not have a formal agreement with Hay Exploration to serve the farm tap customers along the gathering lines owned by Hay Exploration but is in the process of finalizing such an agreement.<sup>21</sup>

---

<sup>17</sup> Tariff Filing at unnumbered page 1.

<sup>18</sup> Response to Staff's Third Request, Item 12.

<sup>19</sup> Response to Staff's First Request, Item 12.

<sup>20</sup> Response to Staff's First Request, Item 11, and Response to Staff's Second Request, Item 12 indicate that the number of free gas customers is 78. Sturgill Direct at 2-3 indicates the number of free gas customers is 32.

<sup>21</sup> Response to Staff's Third Request, Item 14(c), The response states that Natural Gas Services expects this agreement will be "executed over the next 60 days"; Response to Staff's Appendix Request, Item 5. The response indicates Natural Gas Services and Hay Exploration are in the process of

For the reasons discussed below, the Commission finds that Natural Gas Services' proposed tariff is denied.

### DISCUSSION AND ANALYSIS

#### KRS 278.485: The "Farm Tap" Statute

In pertinent part KRS 278.485 states:

Every gas pipeline company obtaining gas from producing wells located within this state, upon the request of the owner of the property on or over which any producing well or gas gathering pipeline is located or the owner of real estate whose property and point of desired service is located within one-half air-mile of said company's producing gas well or gas gathering pipeline, shall furnish gas service to such owner and applicant, subject to and upon the following terms, conditions, and provisions, to-wit:

(1) The gas service shall be furnished at rates and minimum monthly charges determined by the Public Service Commission.

...

(8) Every gas pipeline company obtaining gas from producing wells within the state shall offer each surface owner the right of a tap or hookup for natural gas from any gathering line which crosses the surface owner's property. The cost of the tap or hookup shall be borne by the consumer.

It is of great importance to note that the statute places the obligation for providing retail gas service to owners of the property, located within one-half air mile of one of the company's wells or gathering lines, on the *gas pipeline company*. The statute indicates service is to be provided *by* "[e]very gas pipeline company obtaining gas from producing wells in this state," and that such service is to be provided *to* "the owner of the property

---

memorializing the "pre-existing informal agreement between the two entities"; and Sturgill Direct at 3. Testimony indicates an agreement is anticipated to be executed in two weeks.

on or over which any producing well or gas gathering pipeline is located . . . .” (Emphasis added.)

#### 807 KAR 5:026: The “Farm Tap” Regulation

The Commission regulation governing natural gas gathering systems incorporates this expectation in 807 KAR 5:026, Section 1(4) by defining “gas company” as the owner of any producing gas well or gathering line. Commission regulation 807 KAR 5:026, Section 9(1) states that each “gas company” shall charge rates filed with and approved by the Commission. It is clear from reading KRS 278.485 together with 807 KAR 5:026 that providing farm tap service is the responsibility of the owner of the production facilities. It is also clear from reading the statute and the regulation together that the pool of potential farm tap customers is very limited. Only those on whose property a producing well or gathering line is present, or owners of property within one half air mile of a producing well or gathering line, are eligible to receive farm tap service. Although KRS 278.485(5)<sup>22</sup> exempts gas companies that own natural gas production facilities that are subject to federal jurisdiction from the requirement to furnish gas service to customers who own property within one half air mile of the facilities, there is no provision in either KRS 278.485 or 807 KAR 5:026 for a gas company to contract out of its statutory obligation to provide service under KRS 278.485, or to contract away its right to charge rates filed with and approved by the Commission to another entity.

---

<sup>22</sup> KRS 278.485(5) provides as follows:

Nothing in this section shall be construed as requiring any gas pipeline company to serve any such owner of property or applicant from any line or lines that have been held to be subject to federal jurisdiction by order of the Federal Energy Regulatory Commission or a court of competent jurisdiction. The provisions of this section shall apply only to producing gas wells and to gas pipelines commonly known as gathering lines.

Likewise, there is no provision for a potential customer who happens to be situated outside of the prescribed proximity to the gathering line to seek farm tap service. Neither the statute, nor the regulation, provides a mechanism to enlarge the population of farm tap service providers beyond the owners of natural gas production facilities, or a means to expand the field of farm tap customers beyond those owning property and wishing to tap into service within one half air mile of a gathering line or producing well. The statute and the regulation are clear on who is to offer farm tap service, and to whom such service is available.

### Farm Tap Service by Utilities

The Commission, has approved agreements between the owners of gas gathering systems and Delta Natural Gas Company, Inc. (Delta), a regulated utility, wherein Delta services farm taps made to the gathering system.<sup>23</sup> Commission regulated utilities have also acquired farm tap systems through merger, acquisition, and transfer actions with

---

<sup>23</sup> Case No. 8025, *The Application of Delta Natural Gas Company, Inc. for an Order Authorizing the Issuance of 750,000 Shares of Common Stock; Authorizing the Purchase by Delta Natural Gas Company, Inc. of all the Assets of Peoples Gas Company of Kentucky and Certain Transmission Facilities of the Wiser Oil Company* (Ky. PSC Dec. 19, 1980); Case No. 2020-00346, *Electronic Application of Essential Utilities, Inc., PNG Companies LLC, Peoples Gas KY LLC, and Delta Natural Gas Company, Inc. for (1) a Declaratory Order and (2) Increase in Rates for Peoples Gas KY LLC* (Ky. PSC Feb. 22, 2021); See Case No. 3563, *Joint Application of Kentucky West Virginia Gas Company and Equitable Gas Company for a Certificate of Public Convenience and Necessity Authorizing the Former to Transfer its Retail Domestic Customers to the Latter; and Application by Equitable Gas Company for Disclaimer of Jurisdiction Over or In the Alternative for Approval of the Issuance of Securities* (Ky. PSC Dec. 1, 1958). The final order in Case No. 3563 is not posted on the Commission's website. A microfiche copy of the order as well as the case file is available for inspection during regular business hours at the office of the Commission, located at 211 Sower Boulevard in Frankfort, Kentucky. In its final Order in this case the Commission approved the acquisition of a portion of the Kentucky West Virginia Gas Company to Equitable. This is part of the farm tap system currently operated by Delta. See also Case No. 2021-00185, *Electronic Application of Delta Natural Gas Company, Inc. for an Adjustment of its Rates and a Certificate of Public Convenience and Necessity*. Delta's response to Commission Staff's Fifth Request for Information (filed Nov. 8, 2021), and Delta's Post-hearing Brief (filed Dec. 13, 2021), at 10-19, provide the history of Delta's farm tap service and the contractual arrangements that have led to Delta supplying farm tap service from gathering lines and wells that it does not own.



gathering systems or parent companies.<sup>24</sup> The regulated utilities provide farm tap service to these systems, or when possible incorporate the farm tap system into their distribution system.<sup>25</sup> The Commission has approved these arrangements in its exercise of its plenary powers in general to ensure that utilities provide adequate and reasonable service at fair, just and reasonable rates. However, these arrangements are distinguishable from the arrangement proposed by Natural Gas Services because (1) in those instances the owner of the gathering line made the request, (2) the entity providing the retail service is a regulated utility, and (3) an agreement between the owner of the wells and gathering

---

<sup>24</sup> See Case No. 2008-00394, *Application of Kentucky Frontier Gas, LLC for Approval of Financing and Transfer of Control* (Ky. PSC Nov. 25, 2008), Kentucky Frontier Gas, LLC (Kentucky Frontier) acquired the control of several natural gas utilities as well as the service of farm tap customers served from Alert Gas Company. Kentucky Frontier did not acquire the gathering system of Alert Gas, only the farm taps and the right to provide service. Case No. 2010-00076, *Application of Kentucky Frontier Gas Company, LLC for Approval of Transfer of Stock of Cow Creek Gas, Inc., Dema Gas Company, Inc., Purchase of Farm Tap and Royalty Gas Customers of Interstate Natural Gas Company and Transfer of a Portion of DLR Enterprises, Inc. Pipeline to Cow Creek Gas, Inc.* (Ky. PSC May 7, 2010). Kentucky Frontier acquired the farm tap customers of Interstate Natural Gas Company. Case No. 2012-00099, *Application of Kentucky Frontier Gas, LLC for Approval of Transfer of Assets of the Former B.T.U. Gas Company and Approval of Financing Acquisition* (Ky. PSC June 1, 2012). Kentucky Frontier acquired the assets of B.T.U. at bankruptcy auction. Case No. 2015-00299, *Joint Application of Kentucky Frontier Gas, LLC and Public Gas Company for Approval of Transfer and Acquisition of Assets and Financing* (Ky. PSC Nov. 24, 2015) Kentucky Frontier acquired Public Gas Company's farm tap customers as well as its distribution assets. Case No. 1992-00274, *The Application of Columbia Gas of Kentucky, Inc., for Authority to Acquire Certain Facilities of the Inland Gas Company, Inc., and for a Certificate of Public Convenience and Necessity to Serve Customers located in Carter and Boyd Counties, Kentucky* (Ky. PSC Sep. 23, 1992). See also: Case No. 2011-00513, *Application of Kentucky Frontier Gas Company, LLC for Approval of Adjustment of Farm Tap Rates*, Application (filed Dec. 20, 2011). In its application Kentucky Frontier explains it provides farm tap service but does not own the production facilities to which these taps are attached. In the Commission's final Order, the Commission reviewed how Kentucky Frontier came to be in possession of farm taps but not the production facilities to which they were attached and approved a rate for farm tap service. It is worth noting that Kentucky Frontier submitted its application for rates pursuant to 807 KAR 5:001(10), the regulation governing general rate applications, and not 807 KAR 5:026(9), the regulation that governs requests for rate adjustments by farm tap systems (Ky. PSC May 30, 2012), final Order.

<sup>25</sup> Case No. 1992-00274, *Columbia Gas of Kentucky, Inc.* (Ky. PSC Sep. 23, 1992). Columbia Kentucky acquired the facilities and farm tap customers of Inland Gas Company, and following that acquisition, Columbia Kentucky integrated these former farm taps into its distribution system, final Order at 3; Case No. 2011-00513, *Kentucky Frontier Gas Company* (filed Dec. 20, 2011). Kentucky Frontier acquired farm tap systems from several small natural gas production companies and continues to operate those systems as farm tap systems, but files for rate adjustments for those systems as it does for its distribution system.

system and the retail service supplier was presented to the Commission for review and approval. Here, Natural Gas Services does not present itself as a regulated utility but claims to be a newly formed entity formed for the express and sole purpose of providing retail gas service on behalf of Hay Exploration. Here also, Hay Exploration has made no request that the Commission permit Natural Gas Services to provide retail gas service on its behalf to customers situated within one half air mile of its wells or gathering lines, and no agreement outlining the responsibilities of the two entities has been presented to the Commission. Indeed, no written agreement exists at this time.

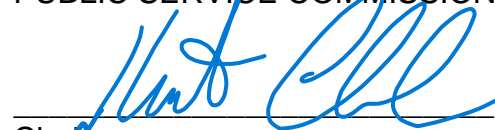
Because Natural Gas Services is not a regulated utility and is not the gas pipeline company that owns the production facilities providing the gas to the farm taps at the center of this proceeding, Natural Gas Services has no statutory obligation to serve the farm tap customers in question, and it has no right to charge rates for gas service. The Commission has only expanded the population of farm tap service providers beyond the limits prescribed by KRS 278.485 and 807 KAR 5:026 by approving contracts between a regulated utility and a natural gas production company and by approving the acquisition of farm tap systems by regulated utilities under its plenary authority to regulate utilities as defined under KRS Chapter 278. The Commission cannot expand upon the limits set by KRS 278.485 and 807 KAR 5:026 by approving the tariff proposed by Natural Gas Services under the circumstances presented on this record. Hay Exploration, not Natural Gas Services, has a statutory obligation to provide natural gas service to those individuals situated in relation to its production facilities as articulated in KRS 278.485, and it has the right to charge rates for that service. However, Hay Exploration must seek Commission approval for its rates.

IT IS THEREFORE ORDERED that:

1. The rates and charges proposed by Natural Gas Services are denied.
2. This case is closed and removed from the Commission's docket.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

PUBLIC SERVICE COMMISSION

  
\_\_\_\_\_  
Chairman

  
\_\_\_\_\_  
Vice-Chairman

\_\_\_\_\_  
Commissioner

ENTERED  
MAR 23 2022 rcs  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
\_\_\_\_\_  
Executive Director

\*Gregory T Dutton  
Frost Brown Todd, LLC  
400 West Market Street  
32nd Floor  
Louisville, KENTUCKY 40202-3363

\*Natural Gas Services, LLC  
1544 Winchester Avenue, Suite 1108  
Ashland, KY 41101

\*Monte Hay  
Natural Gas Services, LLC  
1544 Winchester Avenue, Suite 1108  
Ashland, KY 41101