

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF)	
JURISDICTIONAL STATUS OF EAST KENTUCKY)	CASE NO.
MIDSTREAM, LLC, AND OF ITS COMPLIANCE)	2022-00238
WITH KRS CHAPTER 278, 807 KAR CHAPTER)	
005, AND 49 CFR PARTS 191 AND 192)	

ORDER

The Commission, on its own motion, finds that this proceeding should be initiated to investigate whether East Kentucky Midstream, LLC (East Kentucky Midstream) is selling, furnishing, or transporting natural gas to or for the public and is therefore subject to the Commission’s jurisdiction as a utility under KRS 278.040. An investigation is also necessary to determine whether the pipeline owned and operated by East Kentucky Midstream should be regulated for compliance with federal pipeline safety standards pursuant to KRS 278.495(2).

BACKGROUND

Kentucky Frontier Gas, LLC (Kentucky Frontier) is a natural gas distribution utility that serves approximately 5,200 customers in 13 counties in Eastern Kentucky.¹ On July 22, 2022, Kentucky Frontier filed a verified application for a declaratory order

¹ *Annual Report of Kentucky Frontier to the Public Service Commission for the Calendar Year Ended December 31, 2020* at 5.

(Application) regarding the Commission’s jurisdiction over one of Kentucky Frontier’s suppliers, East Kentucky Midstream.²

Kentucky Frontier stated in its Application that since 2008, it has acquired the gas distribution systems of twelve small gas operators in Eastern Kentucky and consolidated them into one gas utility. The largest of these systems was Public Gas. Kentucky Frontier serves approximately 1,600 customers in the communities of Jackson, Campton, Pine Ridge, Cliffview, Hazel Green and other rural areas on the former Public Gas system.³

According to Kentucky Frontier, for years Jefferson Gas⁴ was the sole gas supplier to Public Gas. Jefferson Gas continued as the sole supplier of gas to the Public Gas distribution system after Public Gas was merged into Kentucky Frontier in 2015.⁵

Kentucky Frontier stated in its Application that in March 2021, Jefferson Gas notified Kentucky Frontier that it had sold its pipeline system to East Kentucky Midstream, effective March 1, 2021. Kentucky Frontier further stated that it entered into a new gas supply contract with East Kentucky Midstream. According to Kentucky Frontier, East Kentucky Midstream is the only source of gas supply for its customers served on the former Public Gas distribution system.⁶

² Case No. 2022-00224, *Electronic Application for a Declaratory Order Regarding Commission Jurisdiction* (filed July 22, 2022).

³ Case No. 2022-00224, Application at 2.

⁴ Jefferson Gas Transmission Company, Inc., merged with Jefferson Gas, LLC, in 2002, with Jefferson Gas, LLC, being the surviving entity. “Jefferson Gas” in this Order refers to Jefferson Gas, LLC, and its predecessor entity.

⁵ Case No. 2022-00224, Application at 2.

⁶ Case No. 2022-00224, Application at 3.

Kentucky Frontier stated that on July 18, 2022, it received two invoices from East Kentucky Midstream in the total amount of \$283,668.85, with a cover letter stating that East Kentucky Midstream would terminate its gas supply contract with Kentucky Frontier if the amount billed was not paid within 30 days.⁷ Kentucky Frontier asserted that it does not have another source of gas supply for its customers served on the former Public Gas distribution system.

Kentucky Frontier alleged that East Kentucky Midstream is subject to the Commission's jurisdiction as either a distribution or transportation gas utility. Kentucky Frontier further alleged that East Kentucky Midstream should be subject to the Commission's jurisdiction over the rates and services of utilities as defined in KRS 278.020, as well as the Commission's jurisdiction to enforce federal pipeline safety standards for operators of jurisdictional natural gas pipeline facilities. Kentucky Frontier contended that it does not have an alternative source of gas supply for its customers on the Public Gas system and that the rates East Kentucky Midstream charges for supplying gas are not fair, just or reasonable.⁸ Kentucky Frontier requested the Commission to assert jurisdiction over the rates charged by East Kentucky Midstream to Kentucky Frontier.⁹

DISCUSSION

The Commission has regulated Jefferson Gas in the past. In Case No. 1998-00499, the Commission classified Jefferson Gas for jurisdictional purposes as an operator

⁷ Case No. 2022-00224, Application at 13 and Exhibit C.

⁸ Case No. 2022-00224, Application at 12.

⁹ Case No. 2022-00224, Application at 15.

of a farm tap system.¹⁰ In that case, Jefferson Gas applied for an adjustment of rates charged to direct tap customers pursuant to 807 KAR 5:026, Section 9. According to the application, Jefferson Gas had 148 farm tap customers on its system.¹¹ Before ruling on the application, the Commission required Jefferson Gas to provide additional data and financial information about its petition, specifically including a detailed analysis of assets and liabilities associated with the company's farm tap operations, the allocation of operating expenses and overhead to farm tap, production and transmission operations, and the recovery of overhead expenses from the company's wholesale customers.¹²

Commission Staff and Jefferson Gas later entered into a settlement agreement concerning appropriate farm tap rates. In its Order accepting Commission Staff's settlement with Jefferson Gas and granting an adjustment, the Commission stated:

Jefferson Gas . . . is a gas company which operates a natural gas gathering system in Breathitt County and surrounding counties in Kentucky. Jefferson Gas is not a utility as defined in KRS 278.010(3)(b), since the service provided to the 148 customers herein is required by KRS 278.485 and is commonly referred to as a 'farm tap system.'

The Commission did not address in its Order the jurisdictional status of Jefferson Gas's wholesale sales of natural gas.

Jefferson Gas still has a farm tap tariff for the retail sale of gas on file with the Commission pursuant to KRS 278.485. Specifically, Jefferson Gas gave notice to the

¹⁰ Case No. 1998-00499, *Application of Jefferson Gas Transmission Co., Inc. for Adjustment of Rates* (Ky. PSC Feb. 16, 1999).

¹¹ Case No. 1998-00499 (Ky. PSC Ky. PSC Dec. 14, 1998), Order at 1.

¹² Case No. 1998-00499 (Ky. PSC Dec. 18, 1998), Order at 1-4.

Commission in 1996 that it was adopting the tariff of the Capitol Oil Company for the furnishing of natural gas. Jefferson Gas last revised its tariff effective February 1, 2013.

Two segments of pipeline on the Jefferson Gas system meet the definition of “transmission line” under federal gas pipeline safety regulations.¹³ The Commission regulates the safety of these facilities pursuant to its authority under KRS 278.495(2).

The Commission has not previously considered whether East Kentucky Midstream is a utility subject to its jurisdiction under KRS 278.040 or a gas company that provides retail farm tap service pursuant to KRS 278.485. East Kentucky Midstream has never filed a gas distribution, transmission, or farm tap tariff with the Commission. East Kentucky Midstream did not apply for Commission approval to acquire Jefferson Gas and commence provision of gas service.

Commission Staff has inspected the segments of transmission line on the Jefferson Gas system for compliance with pipeline safety standards subsequent to East Kentucky Midstream’s acquisition of the system. No violations were cited by Commission Staff.

Kentucky Frontier alleged in its Application that over the years, the operation and configuration of the Jefferson Gas system has changed. Specifically, Kentucky Frontier alleged that years ago, Jefferson Gas gathered and transported locally produced gas to Public Gas and sold any excess production into the interstate market. As local production declined, Jefferson Gas increasingly purchased gas needed to supply its wholesale customers from the interstate market at its interconnect with the Columbia Gas Transmission interstate transmission pipeline system. Kentucky Frontier contended that

¹³ See 49 C.F.R. §192.3.

the former Jefferson Gas system evolved into a predominantly gas transmission system, supplying gas from the interstate market to local distribution utilities.¹⁴ Kentucky Frontier noted that segments of the Jefferson Gas system are regulated as transmission lines under federal gas pipeline safety regulations.

Kentucky Frontier also claimed, on information and belief, that the Jefferson Gas system has become “essentially a distribution system.” Kentucky Frontier claimed that not all of the customers designated as farm tap customers are located on the main Jefferson Gas system but are served by distribution lines that branch off the mainlines. Kentucky Frontier stated that it appears many of these customers would not be entitled to service under KRS 278.485.

FINDINGS

Based on the verified Application of Kentucky Frontier, the Commission finds that a formal investigation should be opened into the operation and configuration of the former Jefferson Gas system acquired by East Kentucky Midstream. A formal investigation is necessary to determine whether East Kentucky Midstream is selling, furnishing, or transporting natural gas to or for the public and of so, would therefore be subject to the Commission’s jurisdiction as a utility under KRS 278.040. An investigation is also necessary to determine if the additional segments of pipeline owned and operated by East Kentucky Midstream should be regulated for compliance with federal pipeline safety standards pursuant to KRS 278.495(2). The Commission finds that a formal investigation into East Kentucky Midstream’s jurisdictional status and compliance with pipeline safety

¹⁴ Application at 6.

standards will allow a more comprehensive review that Kentucky Frontier's application for a declaratory order.

The Commission further finds that the entirety of the record in Case No. 2022-00224 should be incorporated in the present case.

Finally, Commission directs East Kentucky Midstream to the Commission's July 22, 2021 Order in Case No. 2020-00085¹⁵ regarding filings with the Commission.

IT IS THEREFORE ORDERED that:

1. This proceeding is opened to investigate the jurisdictional status of East Kentucky Midstream and its compliance with KRS Chapter 278, 807 KAR Chapter 005, and 49 C.F.R. Parts 191 and 192.

2. East Kentucky Midstream is made a party to this proceeding.

3. The record in Case No. 2022-00224¹⁶ shall be incorporated by reference into this matter.

4. Any interested party may, by counsel, file a motion to intervene within 14 days of the date of service of this Order.

5. Pursuant to 807 KAR 5:001, Section 8(9), within seven days of service of this Order, East Kentucky Midstream shall file a written statement with the Commission that:

¹⁵ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001, Section 8).

¹⁶ Case No. 2022-00224, *Electronic Application for a Declaratory Order Regarding Commission Jurisdiction*.

a. Certifies that it, or its agent, possesses the facilities to receive electronic transmissions; and

b. Sets forth the electronic mail address to which all electronic notices and messages related to this proceeding shall be served.

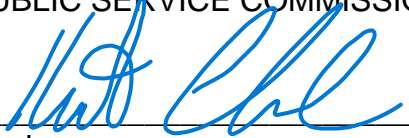
6. Unless otherwise ordered by the Commission, the procedures set forth in 807 KAR 5:001, Section 8, related to service and electronic filing of papers shall be followed in this proceeding.

7. Pursuant to 807 KAR 5:011, Section 8(9), within seven days of service of this Order, East Kentucky Midstream shall file by electronic means a written statement that it waives any right to service of Commission orders by United States mail and that it or its authorized agents possess the facilities to receive electronic submissions.

8. A copy of this Order shall be served upon Kentucky Frontier at the address on file with the Commission in accordance with 807 KAR 5:006, Section 3.

9. Nothing contained herein shall prevent the Commission from entering further Orders in this matter.

PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman



Commissioner



ATTEST:



Executive Director

Jack Justice
East Kentucky Midstream, LLC
525 George Road
PO Box 565
Betsy Layne, KENTUCKY 41605