

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF)	
JURISDICTIONAL STATUS OF LINDSEY)	CASE NO.
ENTERPRISES, LLC AND OF ITS COMPLIANCE)	2023-00207
WITH KRS CHAPTER 278, 807 KAR CHAPTER)	
005, AND 49 CFR PARTS 191 AND 192)	

ORDER

On June 27, 2023, the Commission, on its own motion, initiated this proceeding to conduct a formal investigation into the jurisdictional status of Lindsey Enterprises, LLC (Lindsey Enterprises).¹ Although it was actively serving customers, there were no Commission approved rates on file for either distribution or farm tap service. In addition to the lack of approved rates, this investigation sought to determine whether the service provided was exclusively considered farm tap gas service consistent with KRS 278.485, and therefore, subject to only limited Commission jurisdiction.² There were no intervenors in the matter. Lindsey Enterprises responded to two requests for information.³ Lindsey Enterprises waived a formal hearing in this matter on October 10, 2024.⁴ On December

¹ Opening Order (Ky. PSC June 27, 2023).

² A gas pipeline company that falls with the parameters of KRS 278.485 is referred to as a "farm tap company" or a company that provides "farm tap service." Case No. 2013-00163, *Joint Application of PNG Companies LLC, Peoples natural Gas Company LLC, EQT Corporation, Distribution HoldCo, LLC and Equitable Gas Company, LLC for Approval of Acquisition of Ownership and Control of Equitable Gas Company, LLC* (Ky. PSC Sept. 3, 2013), Order at 6-7.

³ Lindsey Enterprises' Response to Commission Staff's First Request for Information (Staff's First Request) (filed Nov. 22, 2023); Lindsey Enterprises' Response to Commission Staff's Second Request for Information (Staff's Second Request) (filed May 31, 2024).

⁴ Order (Ky. PSC Oct. 10, 2024).

20, 2024, the Commission ordered that this case be held in abeyance pending the final Order in Case No. 2023-00224⁵ addressing the tariff filed by Lindsey Enterprises⁶. On July 25, 2025, Lindsey Enterprises filed a motion to abandon service at Fords Branch. As the petition is directly on point, the Commission will address Lindsey Enterprises' motion as part of this final Order. The matter now stands submitted for a decision.

BACKGROUND

According to its discovery responses, Lindsey Enterprises stated that it owns natural gas wells and operates a natural gas gathering and production system that sells wholesale natural gas to market with approximately 53 gas end-users in Pikeville, Kentucky.⁷ The Commission was made aware of complaints submitted to the office of the Attorney General, and referred by the Attorney General to the Commission, concerning the termination of natural gas service to customers of Lindsey Enterprises in the Fords Branch area of Pike County, Kentucky. Copies of two such complaints were attached to the Opening Order of this case.⁸ Additionally, the Commission received a copy of the letter sent by Lindsey Enterprises on May 19, 2023, to a customer on Church of Christ Way in Pikeville, Kentucky, indicating that natural gas service would be terminated on June 30, 2023. A copy of that letter was attached to the Opening Order of this case.⁹ The letter identified the service provided to the complaining customer as "farm

⁵ Case No. 2023-00224, *Electronic Tariff Filing of Lindsey Enterprises, LLC For Initial Rules, Regulations, And Rates for Furnishing Gas Service Pursuant to KRS 278.485* (Ky. PSC July 29, 2024), Order.

⁶ Order (Ky. PSC Dec. 20, 2024).

⁷ Lindsey Enterprises' Response to Staff's First Request, Item 1.

⁸ Opening Order (Ky. PSC June 27, 2023).

⁹ Opening Order (Ky. PSC June 27, 2023).

tap gas service.”¹⁰ At the time of the opening of this investigation, the Commission had no record of approving farm tap service rates for Lindsey Enterprises. Pursuant to Case No. 2023-00224, Lindsey Enterprises filed its tariff on July 29, 2024, with an effective date of August 1, 2024.¹¹

LEGAL STANDARD

Pursuant to KRS 278.040, the Commission has jurisdiction over the rates and services of all utilities in Kentucky, including natural gas local distribution companies. All utilities in Kentucky must provide adequate, efficient, and reasonable service, and establish reasonable rules under which they will be required to render service.¹² KRS 278.010(14) defines “adequate service” in part as maintaining sufficient facilities to assure customers of a “reasonable continuity of service.”¹³ KRS 278.010 states that a “utility” includes any person...who owns, controls, operates or manages any facility used in connection with the production, manufacture, transportation, storage, distribution, conveying or sale of natural gas to or for the public for compensation.

The Commission has jurisdiction over complaints as to the “rates or service of any utility”,¹⁴ and pursuant to KRS 278.260, the Commission “shall proceed, with or without

¹⁰ Opening Order (Ky. PSC June 27, 2023), Appendix B.

¹¹ These tariffs were not filed in a timely manner as discussed in the Order issued February 10, 2025.

¹² KRS 278.030(2).

¹³ KRS 278.010(14) "Adequate service" means having sufficient capacity to meet the maximum estimated requirements of the customer to be served during the year following the commencement of permanent service and to meet the maximum estimated requirements of other actual customers to be supplied from the same lines or facilities during such year and to assure such customers of reasonable continuity of service.

¹⁴ KRS 278.260(1).

notice, to make such investigation as it deems necessary or convenient.”¹⁵ The Commission may also initiate investigations on its own motion.¹⁶ Further, KRS 278.250 states that “[i]n conducting such investigation, the commission may proceed with or without a hearing as it deems best but shall make no order without giving a hearing to the parties affected thereby.”

If the Commission finds that any practice of a utility is unjust, unreasonable, unsafe, improper, inadequate, or insufficient, the Commission may prescribe a practice for the utility that enables the utility to maintain “adequate, efficient and reasonable service.”¹⁷ Additionally, utilities found by the Commission be in violation of any provision of KRS Chapter 278 are subject to the penalties set forth in KRS 278.990. Any person found to have violated federal pipeline safety laws contained in 49 U.S.C. Section 60101 *et seq.* is subject to the penalties set forth in 49 C.F.R. Section 190.223.¹⁸

Finally, with respect to farm tap gas service, pursuant to KRS 278.485, the Commission has limited jurisdiction over connections requested by property owners located within one-half (1/2) air-mile of a gas pipeline company’s producing gas wells or gas gathering pipeline¹⁹, or as part of a statutorily required and agreed-upon oil-and-gas lease and right of way agreement.²⁰ KRS 278.485(5) specifies that the provisions of this

¹⁵ KRS 278.260(1).

¹⁶ KRS 278.250.

¹⁷ KRS 278.030(2).

¹⁸ KRS 278.992.

¹⁹ Case No. 2018-00263, *Georgia Johnson v. Peoples Gas KY, LLC* (Ky. PSC, Mar. 27, 2020), Order at 5.

²⁰ KRS 278.485(8).

section shall apply only to producing gas wells and to gas pipelines commonly known as gathering lines. The term “gathering lines” is defined in 807 KAR 5:026 in the same manner utilized by the U.S. Department of Transportation in 49.C.F.R. Parts 191, 192, 194, and 195 to identify those lines that “transport gas from a current production facility to a transmission line or main.”

KRS 278.485 also limits the Commission’s jurisdiction over gas pipeline companies offering only farm tap gas service, in that the Commission cannot restrict the right of any gas pipeline company to abandon any gas well or gathering pipeline, that the gas pipeline company is not responsible for the construction or maintenance of the service lines or regulators, and the gas pipeline company is not responsible for maintaining any specified gas pressure to farm tap gas recipients.²¹ However, the Commission does maintain jurisdiction concerning the rates to be charged for farm tap service, and the Commission inspects the installation of the meter and gas regulator used in establishing a farm tap service.²² Service lines must also be installed in accordance with the safety standards prescribed by the Commission.²³ Finally, rates charged for farm tap service must be approved by the Commission.²⁴

FINDINGS

Based on the review of the character of the service provided by Lindsey Enterprises, and being otherwise sufficiently advised, the Commission finds that, given

²¹ KRS 278.485(2), (4), and (6).

²² KRS 278.485(1) and (3).

²³ 807 KAR 5:026, Section 2 through 6.

²⁴ 807 KAR 5:026, Section 9.

its limited-service role and current clear compliance with KRS 278.485, Lindsey Enterprises should not be deemed a jurisdictional utility and should instead retain its status as a gas pipeline company consisting of gathering lines and producing gas wells. In determining the jurisdictional status of the system, the Commission must determine whether the gas pipeline company is operating within the parameters of KRS 278.485. To make that determination, the Commission first considers the origin of the system and its current primary function. Second, the Commission determines who the responsible party is for the construction and maintenance of the system. And third, the Commission will evaluate the level of continuity of service provided on the system based on the evidence in the record.

The System's Origination and Current Primary Function

As stated above, the Commission's first consideration is to determine origin of the system as compared to the current primary function of the system. Lindsey Enterprises maintains that it provides farm tap gas service in Pike, Floyd, Knott, Letcher, and Perry counties²⁵ Lindsey Enterprises has stated that it is providing "statutory tap gas" only.²⁶ The term "statutory tap gas" is used throughout the responses provided by Lindsey Enterprises.²⁷ The Commission notes that Lindsey Enterprises is referring to the statutory requirement, pursuant to KRS 278.485 to provide gas service when requested by property owners located within one-half air-mile of a gas pipeline company's producing gas well

²⁵ Lindsey Enterprises, LLC Tariff Filing, P.S.C. Gas No. 1.

²⁶ Lindsey Enterprises' Response to Staff's First Request, Item 1.

²⁷ Lindsey Enterprises' Response to Staff's First Request, Items 1, 2, 3, 8, 10, 16, 18, and 19.

gas gathering pipeline, or as part of statutorily required and agreed-upon oil-and-gas lease and right of way agreement.²⁸

The complaints received by the Commission concerning the termination of natural gas service to customers in the Fords Branch area allude to the origin of the system being based on a request for service from a party to a lease agreement or right of way agreement. The complaints indicated that the natural gas service provided had been generational in nature and provided “for over 40 years” and “all her life.”²⁹ Additionally, Lindsey Enterprises provided documentation that indicated the origin of the customer base in Fords Branch was based on an oil and gas lease transaction that occurred in 1945.³⁰ The lease provided for a limited quantity of free gas service to the surface owners on whose property the producing well gathering lines in question were located. The lease included language regarding the quantities of free gas to be provided to the parties to the lease. A relevant portion of the lease provisions is reproduced below.

In lieu of the free gas privileges contained in said oil and gas leases herein mentioned, the said parties of the first part hereinafter set out shall be entitled to receive the following volumes of gas per year, to-wit:

Eliza Tackett	100,000 cubic feet to be used exclusively on said 38 acre tract of land
Jack Sowards & J. B. Sowards, } jointly }	100,000 cubic feet to be used exclusively on said 135.7 acre tract of land

all on condition, however, that the said well when drilled produces gas in paying quantities and justifies such deliveries. The provisions of this paragraph are subject, however, to any Federal Order or Regulation affecting the deliveries or use of gas.

All of the terms and conditions of said oil and gas leases, with respect to the laying, maintaining, operating, extending of lines and the use of free gas, are in no wise modified and affected hereby, except as to quantity, as aforesaid, but shall otherwise remain in full force and effect.

²⁸ KRS 278.485(8).

²⁹ Opening Order (Ky. PSC June 27, 2023).

³⁰ Lindsey Enterprises' Response to Staff's First Request, Item 1, Attachment.

KRS 278.485(8) provides for farm tap gas service as part of a statutorily required and agreed-upon oil-and-gas lease and right of way agreement.³¹ It provides the obligations of farm tap gas recipients to construct and maintain the service lines pursuant to KRS 278.485(2). Consistent with KRS 278.485(2), the lease in this proceeding appears to support the contention that those responsibilities remained with the farm tap gas recipients. Lindsey Enterprises stated that it had continued to provide farm tap gas service to the individuals who are heirs and assigns to those agreements.³²

The system's current function must also be considered and compared to the system's original function. As the Kentucky Court of Appeals held, "the character of a natural gas line is not static, but rather changes with the needs of its owner and the public."³³ For example, in a 2017 Commission proceeding involving the Gas Group, the Commission, relying on a Court of Appeals' decision, determined that the classification of a gas pipeline is determined by its primary function and can change if the use of the pipeline changes.³⁴ The Commission therefore found, based on the change in the character and function of the line from a gathering line to a distribution line, that Gas Group was no longer operating within the parameters of KRS 278.485 because the

³¹ Lindsey Enterprises' Response to Staff's First Request, Item 1 Attachment.

³² Lindsey Enterprises' Response to Staff's First Request, Item 1 Attachment.

³³ *Pollitt v. Public Service Comm'n*, No. 2004-CA-001516-MR, 2005 WL 2573987 at *3.

³⁴ Case No. 2017-00120, *Pollitt Enterprises, Inc., Whitney Clark Pollitt, individually, Amanda Deeann Pollitt, individually, and Basil Pollitt, individually d/b/a The Gas Group, Inc., a/k/a The Gas Group Alleged Violations of KRS 278.020, KRS 278.160, KRS 278.140, AND 807 KAR 5:006, Section 4(2)* (Ky. PSC Dec. 27, 2017), Order at 11-12.

pipeline serving customers was not functioning as a gas gathering line, but instead was operating a gas distribution utility within the meaning of KRS 278.010(3)(b).³⁵

According to Lindsey Enterprises, the primary function of the main pipeline in the Fords Branch area, at its origin, was to move gas from the Charles Sowards well and deliver that gas into the wholesale market, with compensation being received by the parties to the lease agreement.³⁶ Lindsey Enterprises' provided information that the purpose of the gathering line in question has not changed, with delivery of the gas produced at the Charles Sowards' well taking place at the Diversified Gas sales point.³⁷

Lindsey Enterprises asserted that its current operation of the system is almost identical to its operation described in the original lease agreement, although the number of eligible farm tap recipients due to proximity has increased.³⁸ Therefore, the system at issue here resembles more closely to the system in *Georgia Johnson v. Peoples Gas KY, LLC*, in which the Commission noted that "a gas producer or gathering line operator that provides only farm tap service is not a utility because service is not furnished to the public but is restricted to owners of property in close proximity to the production or gathering facilities".³⁹ Consequently, the gas recipients in Ford Brand are served, as statutorily mandated, but are ancillary to the continued gathering line function of the pipeline coming from the Charles Sowards' well. In short, the system's primary function is the natural gas gathering and the customers at issue are farm tap gas service customers.

³⁵ Case No. 2017-00120, Dec. 27, 2017 Order at 13-14.

³⁶ Lindsey Enterprises' Response to Staff's First Request, Item 1, Attachment.

³⁷ Lindsey Enterprises' Response to Staff's First Request, Item 13.

³⁸ Lindsey Enterprises' Response to Staff's Second Request, Item 14.

³⁹ Case No. 2018-00263, Dec. 27, 2017 Order at 5.

Determining Who is Responsible for The Construction and Maintenance of The System

Having dispensed with the first part of the inquiry, the Commission must still determine the responsible party for construction and maintenance of the system. Farm tap gas service lines are uniquely distinguishable from utility service because KRS 278.485(2) designates the farm tap gas recipient responsible for constructing and maintaining service lines and necessary regulators.⁴⁰ Commission regulation 807 KAR 5:026 outlines the customers' responsibilities to furnish, install and maintain all equipment necessary for service, aside from the meter, service tap, saddle, and first shut off valve, which are to be installed by the gas company.⁴¹ Construction and maintenance are not the responsibility of the gas company with farm tap gas service. In Case No. 92-168, the Equitable Gas Company customers were responsible for supply, maintaining, and operating the necessary regulator and service lines.⁴² Additionally, if safety issues are found on the [farm tap] service line, the gas company's only responsibility is to discontinue service until the customer remedies the condition.⁴³

With regard to Lindsey Enterprises, the record reflects that the pipeline off the main gathering line and the service lines were constructed by the gas recipients in the Ford

⁴⁰ KRS 278.485(2) The applicant for such gas service shall construct or cause to be constructed, and shall maintain and keep in good repair, the service lines, and shall provide and install or cause to be installed, and keep in good repair, the necessary automatic gas regulators, and shall pay the entire cost thereof. The company, at its own expense, shall provide, install, and maintain the necessary gas meters.

⁴¹ 807 KAR 5:026, Section 1(6) & (7).

⁴² Case No. 92-168, *An Investigation into Equitable Gas Company's Status as a Provider of Farm Tap Service* (Ky. PSC Feb. 8, 1993), Order at 2. Also referenced in Case No. 2013-00163, *Joint Application of PNG Companies LLC, Peoples Natural Gas Company LLC, EQT Corporation, Distribution Holdco LLC and Equitable Gas Company, LLC for approval of acquisition of ownership and control of Equitable Gas Company, LLC* (Ky. PSC Sept. 3, 2018), Order at 8.

⁴³ 807 KAR 5:026(8).

Branch area and are owned and maintained by those gas recipients in accordance with KRS 278.485(2).⁴⁴ Lindsey Enterprises has continuously required the gas recipients to do the necessary maintenance in accordance with KRS 278.485(2).⁴⁵ If maintenance issues occurred, Lindsey Enterprises would turn off the statutory tap until Fords Branch recipients could complete the necessary maintenance work.⁴⁶ There were instances when Lindsey Enterprises did perform repairs or maintenance on the lines, but Lindsey Enterprises did so under a separate service contract with payment for services rendered.⁴⁷ In reviewing the evidence in the case record, the Commission finds that, as to the second prong, Lindsey Enterprises has required the farm tap gas recipients in the Fords Branch area to maintain responsibility for the service lines that the recipients installed indicating traditional farm tap service.

The Level of Continuity of Service Provided on the System

Finally, the Commission must consider the level of continuity of service provided on the system. In Case No. 2018-00263,⁴⁸ the Commission found that Peoples Gas was not a utility and had no duty to maintain continuity of service. Likewise, Lindsey Enterprises has taken no action to provide the level of continuity of service required to be provided by local distribution companies to the gas recipients in the Fords Branch area. Lindsey Enterprises' Commission approved tariff outlines that Lindsey Enterprises shall not be liable to the customer for discontinuance of service resulting from the plugging,

⁴⁴ Lindsey Enterprises' Response to Staff's First Request, Item 18.

⁴⁵ Lindsey Enterprises' Response to Staff's First Request, Item 10.

⁴⁶ Lindsey Enterprises' Response to Staff's First Request, Item 10.

⁴⁷ Lindsey Enterprises' Response to Staff's First Request, Item 10.

⁴⁸ Case No. 2018-00263, Mar. 27, 2020 Order at 14.

abandonment, or change in the use of any of its wells.⁴⁹ Lindsey Enterprise has provided sufficient evidence that only provides gas to the tap when it is available on the gathering line from the Charles Sowards well and does not maintain any fixed or specified gas pressure as authorized in KRS 278.485(4).⁵⁰ Pursuant to the provisions of KRS 278.485, farm tap gas service is subject to discontinuance if the line or well from which the customer receives service is to be abandoned.⁵¹ Based on the findings contained in the Order, the Commission finds that Lindsey Enterprises does not have an obligation to provide continuous service to Fords Branch as it serves those customers pursuant to KRS 278.485.

Lindsey Enterprises filed a motion on July 25, 2025, requesting to abandon lines and discontinue natural gas service to the residents in Fords Branch due to the significant safety hazard created by the lack of maintenance of the natural gas lines providing statutory gas to the residents in the area. Based on the above finding regarding the jurisdictional status of Lindsey Enterprises, the Commission finds that Lindsey Enterprises may disconnect and discontinue service to Fords Branch based on the applicable provisions in KRS 278.485 and 807 KAR 5:026.

IT IS HEREBY ORDERED that

1. Lindsey Enterprises is not a jurisdictional utility and retains its status as a gas pipeline company consisting of gathering lines and producing gas wells pursuant to KRS 278.485.

⁴⁹ Lindsey Enterprises, LLC Tariff Filing, P.S.C. Gas No. 1.

⁵⁰ Lindsey Enterprises' Response to Staff's First Request, Item 5 and 13.

⁵¹ Case No. 2018-00263, Mar. 27, 2020 Order at 9, referencing Case No. 92-168, Feb. 8, 1993 Order at 2.

2. Lindsey Enterprises may disconnect and discontinue service to Fords Branch based on the applicable provisions in KRS 278.485 and 807 KAR 5:026.

3. This case shall be closed and removed from the Commission's docket.

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PUBLIC SERVICE COMMISSION

Chairman

Andrew D Wood

Commissioner

Mary Pat Regan

Commissioner

Chairman Angie Hatton did not participate in the deliberations or decision concerning this case.

ATTEST:

Linda Bridwell RP

Executive Director



Case No. 2023-00207

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