

September 8, 2016

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PUBLIC SERVICE  
COMMISSION

*Via Hand-Delivery*

Ms. Talina Matthews, Ph.D.  
Executive Director  
Kentucky Public Service Commission  
P.O. Box 615  
211 Sower Boulevard  
Frankfort, KY 40602

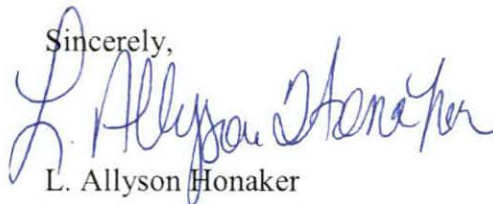
Re: In the Matter of: The Petition of Kentucky Frontier Gas, LLC for a Declaratory Order; Case No. 2016-00287

Dear Ms. Matthews:

Enclosed please find for filing with the Commission in the above-referenced case an original and ten (10) copies of First Baptist Church of Forest Hills' Motion for an Extension of Time to File a Response and Motion to Intervene in the above-styled manner. First Baptist Church of Forest Hills is also filing a Response and Motion to Dismiss. Please return a file-stamped copy to me.

Please do not hesitate to contact me if you have any questions.

Sincerely,



L. Allyson Honaker

Enclosures

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**RECEIVED**

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PUBLIC SERVICE  
COMMISSION

**IN THE MATTER OF:**

**THE PETITION OF KENTUCKY FRONTIER  
GAS, LLC FOR A DECLARATORY ORDER**

)  
)

**PSC CASE NO.  
2016-00287**

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MOTION TO INTERVENE OF  
FIRST BAPTIST CHURCH OF FOREST HILLS

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Pursuant to K.R.S. Section 278.310 and 807 KAR 5:001, Section 4(11), First Baptist Church of Forest Hills ("First Baptist Church") requests that it be granted full intervenor status in the above-captioned proceeding and states in support thereof as follows:

1. First Baptist Church is the entity which is the subject of Kentucky Frontier Gas, LLC's ("Kentucky Frontier") Petition in this case. First Baptist Church was a longstanding customer of Belfry Gas Company, Inc. ("Belfry Gas") and has been a customer of Kentucky Frontier since it purchased Belfry Gas in 2008. The matter primarily relates to a contract dispute that should have instead been asserted in the Pike Circuit Court.

2. The matter being decided by the Commission in this case will have a significant impact on First Baptist Church. Belfry Gas and its successor, Kentucky Frontier have provided natural gas to First Baptist Church under an October 4, 1971 Agreement<sup>1</sup> between First Baptist Church and Belfry Gas wherein First Baptist Church sold and Belfry Gas purchased a natural gas pipeline located on First Baptist Church's property in return for a small upfront payment and monthly

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<sup>1</sup> This Agreement was filed by Belfry Gas as part of its tariff on file with the Commission on August 1, 2002.

payments in the form of savings on natural gas consumed by First Baptist Church. That service was recently and improperly terminated by Kentucky Frontier.

3. The attorneys for First Baptist Church authorized to represent them in this proceeding and to take service of all documents are:

Mark David Goss  
L. Allyson Honaker  
Goss Samford, PLLC  
2365 Harrodsburg Road, Suite B-325  
Lexington, KY 40504  
(859) 368-7740  
mdgoss@gosssamfordlaw.com  
allyson@gosssamfordlaw.com

4. The position of First Baptist Church cannot be adequately represented by any existing party. First Baptist Church plans on playing a constructive role in this proceeding and the participation of First Baptist Church will not unduly prejudice any party. Without being allowed to intervene, its due process rights will be meaningfully and materially injured.

WHEREFORE, First Baptist Church requests that it be granted full intervenor status in this proceeding.

Respectfully submitted,



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Mark David Goss  
L. Allyson Honaker  
Goss Samford, PLLC  
2365 Harrodsburg Road, Suite B-325  
Lexington, KY 40504  
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**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing has been served, by delivering same to the custody and care of the U.S. Postal Service, postage pre-paid, this ~~7<sup>th</sup>~~ <sup>8<sup>th</sup></sup> day of September, 2016, addressed to the following:

John N. Hughes  
124 West Todd Street  
Frankfort, KY 40601  
*Counsel for Kentucky Frontier Gas, LLC*



*Counsel for First Baptist Church of Forest Hills*

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE  
COMMISSION

IN THE MATTER OF:

THE PETITION OF KENTUCKY FRONTIER ) PSC CASE NO.  
GAS, LLC FOR A DECLARATORY ORDER ) 2016-00287

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MOTION FOR AN EXTENSION OF TIME TO FILE  
RESPONSE TO KENTUCKY FRONTIER GAS, LLC'S  
PETITION FOR A DECLARATORY ORDER

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Pursuant to 807 KAR 5:001, Section 19, First Baptist Church of Forest Hills ("First Baptist Church") requests that it be granted an extension of fifteen (15) days within which to file a response to Kentucky Frontier Gas, LLC's ("Kentucky Frontier") petition for a declaratory order. As grounds for this motion First Baptist Church states as follows:

1. On August 3, 2016, Kentucky Frontier filed a Petition for a Declaratory Order with the Commission.
2. Pursuant to 807 KAR 5:001 Section 19, First Baptist Church had twenty-one (21) days from the date of the filing to respond to Kentucky Frontier's petition. However, according to this same section, the Commission can order a different response period.
3. First Baptist Church has recently retained counsel to aid it in this matter, and was previously unaware of the twenty-one (21) response period. First Baptist Church will be materially affected by the decision of the Commission in this matter.
4. Granting a fifteen (15) day extension from the date the Response was originally due in this matter will not unduly prejudice any other party to this proceeding and First Baptist Church's

interest cannot be adequately protected by any other party to this proceeding. In fact, First Baptist Church's Response is being tendered herewith.

WHEREFORE, First Baptist Church respectfully requests that it be granted a fifteen (15) day extension within which to file a response to Kentucky Frontier's petition.

Respectfully submitted,



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Mark David Goss  
L. Allyson Honaker  
Goss Samford, PLLC  
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Lexington, KY 40504  
(859) 368-7740  
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allyson@gosssamfordlaw.com

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John N. Hughes  
124 West Todd Street  
Frankfort, KY 40601  
*Counsel for Kentucky Frontier Gas, LLC*



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*Counsel for First Baptist Church of Forest Hills*

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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IN THE MATTER OF:

THE PETITION OF KENTUCKY FRONTIER ) PSC CASE NO.  
GAS, LLC FOR A DECLARATORY ORDER ) 2016-00287

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FIRST BAPTIST CHURCH OF FOREST HILLS'  
RESPONSE TO KENTUCKY FRONTIER GAS, LLC'S  
PETITION FOR A DECLARATORY ORDER AND  
MOTION TO DISMISS

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Pursuant to 807 KAR 5:001, Section 19, First Baptist Church of Forest Hills ("First Baptist Church"), by counsel, hereby submits the following Response to, and Motion to Dismiss, Kentucky Frontier Gas, LLC's ("Kentucky Frontier") Petition for a Declaratory Order:

1. On October 4, 1971, First Baptist Church and Belfry Gas Company, Inc., ("Belfry Gas") entered into an Agreement under which First Baptist Church would sell to Belfry Gas, "a pipe line of two inch and one and one-half inch in diameter" that ran from the First Baptist Church to a connection point on the City Service Company pipeline. The distance of the conveyed pipeline was approximately 3,000 feet. Belfry Gas agreed to: (1) pay First Baptist Church \$1,100 for the pipeline; and (2) furnish First Baptist Church and its parsonage with gas at a price of \$0.35 per thousand cubic feet. The gas was to be provided at this price for as long as "they have service available in this area." In essence, First Baptist Church accepted a lower upfront payment for the pipeline in exchange for gas purchase savings each year.

2. In its Petition, Kentucky Frontier states that this 1971 Agreement was a pipeline lease and right-of-way agreement. This was not merely a right-of-way agreement and it was certainly

not a lease. It was a valid sales contract within which the consideration for the sale of the pipeline was \$1,100 in cash, and a lower price on the gas used by First Baptist Church and its parsonage. Nowhere in the 1971 Agreement does it state that it was merely for the use of the right-of-way, nor does it state that this is a lease agreement. Also, nowhere in the 1971 Agreement does it state the pipeline being conveyed had to be used to furnish gas in order for First Baptist Church to receive gas at \$0.35 per thousand cubic foot. Resolution of a commercial dispute such as this should be heard in the Pike Circuit Court. In *Simpson County Water Dist. v. City of Franklin*, 872 S.W.2d 460, 464 (Ky. 1994), Kentucky's highest court held that "matters of contract interpretation are well within the court's expertise and not that of utility regulatory agencies." Furthermore the Court held in *Bee's Old Reliable Shows, Inc. v. Kentucky Power Co.*, 34 P.U.R.3d 112, 334 S.W.2d 765, 767 (Ky. 1960), "Although the Public Service Commission has jurisdiction over questions concerning rates and services generally, nevertheless, when a question arises which is peculiar to the individual complainant, the courts will assume jurisdiction and hear the matter... These parties have entered into a contract for service, which, obviously, is not akin to the usual service rendered to the public generally. The contract here is of private concern to these parties. Under the circumstances, jurisdiction is not exclusive with the Public Service Commission, and the case should be submitted to the court."

3. Kentucky Frontier purchased Belfry Gas in 2008, and the parties have abided by the October 4, 1971 Agreement for nearly eight years thereafter. However, on July 13, 2016, First Baptist Church received a letter from Kentucky Frontier stating it would no longer honor the 1971 Agreement and that it would continue to provide gas service to First Baptist Church, but at a much higher cost. Furthermore, even though First Baptist Church was a current customer of Kentucky Frontier, the letter stated that First Baptist Church would have to complete an application for



service or be disconnected. Kentucky Frontier has since disconnected First Baptist Church's service.

4. Pursuant to Kentucky Frontier's tariff, a customer may be disconnected at the customer's request or disconnected by Kentucky Frontier with notice for the following reasons: (1) nonpayment; (2) failing to comply with Rules and Regulations after due notice of such failure and reasonable time is allowed for compliance; and (3) if the Customer's use of service is detrimental to the service furnished by Kentucky Frontier to its other Customers. The tariff goes on to say that service can be disconnected without notice if: (1) there is a condition that is found to be dangerous; (2) if it was restored by someone other than Kentucky Frontier; or (3) Kentucky Frontier's metering or regulating equipment has been bypassed, adjusted, altered or tampered with. None of these situations are present in this case. First Baptist Church did not request that its service be disconnected. It had not failed to pay its bill. Kentucky Frontier did not notify First Baptist Church that it had violated any Rules or Regulations. First Baptist Church's service was not detrimental to the natural gas service being furnished to other customers. There was no dangerous condition. The service had not been restored by someone other than Kentucky Frontier and none of Kentucky Frontier's equipment had been tampered with. As such, service to First Baptist Church should not have been unilaterally disconnected by Kentucky Frontier. Because of Kentucky Frontier's clear and unambiguous failure to properly disconnect its service, First Baptist Church requests the Commission to issue an Order directing Kentucky Frontier to restore service to First Baptist Church, at the contractually agreed upon price.

5. Kentucky Frontier admits in its Petition that it still serves gas in the area of First Baptist Church. Kentucky Frontier also admits in its Petition that based on the terms of the 1971 Agreement, First Baptist Church is entitled to gas at \$0.35 per Mcf. Therefore, since continued

service in the area is the only requirement under the 1971 Agreement, Kentucky Frontier must honor its contractual obligations.

6. Pursuant to KRS 278.040(2), the Commission has authority over rates and services of utilities, including Kentucky Frontier. The price of gas at issue in this case is not a “rate”, but instead is part of the consideration supporting a contract for the sale of property. The Commission does not have jurisdiction to adjudicate property rights under the contract which gives rise to these rights.<sup>1</sup> However, Kentucky Frontier’s disconnection of service does violate its own service tariffs and such failure does fall into the scope of the Commission’s “service” jurisdiction.

7. The 1971 Agreement is a valid contract, supported by bargained for consideration and Kentucky Frontier should not now be allowed to misconstrue this Agreement as merely the granting of a right-of-way or as a lease. Kentucky Frontier has operated under the contract for nearly eight years after Kentucky Frontier acquired Belfry Gas. Belfry Gas had operated under the contract for over thirty years prior to that. Kentucky Frontier now argues that it only purchased the assets and none of the liabilities of Belfry Gas in an attempt to void the 45 year contract.

8. Even if the Commission considers this contract a “rate”, prior to Kentucky Frontier acquiring Belfry Gas, Belfry Gas included the 1971 Agreement in its approved tariff on file with the Commission. The Agreement was file-stamped by the Commission on August 1, 2002. Whether the 1971 Agreement might have been on file with the Commission prior to that is unclear without a detailed search of the Commission’s records which are archived and not readily accessible through its website. Certainly, Kentucky Frontier does not represent or warrant that the

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<sup>1</sup> See *Harold Barker, Ann Barker and Brooks Barker v. East Kentucky Power Cooperative, Inc.*, Order, Case No. 2013-00291 (Ky. P.S.C. April 7, 2014) (holding that “Claims pertaining to such property rights, including the location and valuation of easements, similarly fall outside the scope of the Commission’s jurisdiction over rates and services.”) citing, *Robert J. & Nicole R. Arnold vs. Blue Grass R.E.C.C.*, Order, Case No. 94-528 (Ky. P.S.C. January 6, 1995) (holding that “KRS Chapter 278 provides the Commission with exclusive jurisdiction over the rates and services of utilities. However, matters concerning property law are within the exclusive jurisdiction of the courts of the Commonwealth.”)

1971 Agreement was not filed by Belfry Gas prior to 2002. Furthermore, KRS 278.170 only prohibits an unreasonable preference or advantage, unreasonable prejudice or disadvantage or unreasonable difference for doing the same type of service under the same type of conditions. Therefore, reasonable differences are allowed<sup>2</sup>. In this instance, it is reasonable that First Baptist Church would receive a savings on its natural gas usage, due to the fact that it sold a pipeline, which it owned, to Belfry Gas for a low upfront payment. The savings over time are the remaining consideration for the sale of the pipeline. Had First Baptist Church not negotiated for this savings, the upfront cost for the pipeline would have been considerably more than the amount paid.

9. Moreover, if the Commission determines that the price provided in the 1971 Agreement is a “rate”, the July 13, 2016 letter from Kentucky Frontier to First Baptist Church constitutes defective notice of a change in such rate.<sup>3</sup>

10. In conclusion, the 1971 Agreement is a valid, enforceable contract. It was made between two parties where one party agreed to sell and the other party agreed to purchase a gas pipeline in return for a small upfront payment and regular monthly payments, in the form of savings on the natural gas consumed by the selling party. Therefore, Kentucky Frontier is not requesting that a “rate” be dissolved, but rather for the Commission to dissolve its contractual obligations to First Baptist Church under the 1971 Agreement. For the foregoing reasons the Commission does not have jurisdiction over this commercial dispute. However, to add insult to injury, Kentucky Frontier failed to abide by its tariff or relevant statutes in disconnecting First Baptist Church’s gas service, an injury which the Commission does have the jurisdiction to correct. First Baptist Church respectfully requests that the Commission enter an order requiring Kentucky Frontier to reconnect its gas service pursuant to the same terms in force prior to the disconnection,

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<sup>2</sup> See, *Public Service Commission of Kentucky v. Commonwealth of Kentucky, et. al.*, 320 S.W. 3d (Ky. 2010).

<sup>3</sup> See, KRS 278.160; 807 KAR 5:011.

and to otherwise dismiss this case so that the terms of the 1971 Agreement may be construed in the appropriate court of law.

WHEREFORE, First Baptist Church respectfully requests the Commission to enter an Order directing Kentucky Frontier to reconnect its gas service at the terms in force prior to the disconnection and to dismiss the Petition of Kentucky Frontier for lack of jurisdiction and removing it from the Commission's docket.

Respectfully submitted,



Mark David Goss  
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*Counsel for First Baptist Church of Forest Hills*

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John N. Hughes  
124 West Todd Street  
Frankfort, KY 40601  
*Counsel for Kentucky Frontier Gas, LLC*




*Counsel for First Baptist Church of Forest Hills*

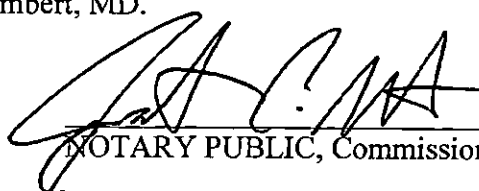
**VERIFICATION**

COMMONWEALTH OF KENTUCKY    )  
  )  
COUNTY OF PIKE                                    )

Brian S. Lambert, MD, Deacon of First Baptist Church of Forest Hills, in his official capacity, and, after being duly sworn, verifies and affirms that he has read the foregoing Response and Motion to Dismiss and that the averments set forth therein are true and correct to the best of his knowledge, information and belief formed after reasonably inquiry.

  
\_\_\_\_\_  
BRIAN S. LAMBERT, MD  
Deacon of First Baptist Church of Forest Hills

The foregoing Verification was signed, acknowledged, and sworn to before me this 7<sup>th</sup> day of September, 2016, by Brian S. Lambert, MD.

  
\_\_\_\_\_  
NOTARY PUBLIC, Commission # \_\_\_\_\_  
My Commission Expires 01/03/2019

