

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

The Petition of Kentucky Frontier Gas, LLC
For A Declaratory Order

) Case No. 2016-00287
)

MOTION TO SUBMIT FOR DECISION

Kentucky Frontier Gas, LLC, (Frontier) by counsel, files this Motion to Submit, based on the pleadings in the record of this case.

The Church has moved to file a Sur-Reply to Frontier's Response. Frontier has no objection to the filing of the pleading. However, there are two issues raised in that Reply that should be clarified. The distinguishing feature of the Fern Lake case cited in the Church's Sur-Reply is that the payments in question were part of the consideration of the purchase of the assets, not rates. The Court's finding that the fixed annual payment for a period of 20 years is not a rate, but part of the consideration makes the case inapplicable to the situation before the Commission. As part of its discussion of the facts, the Court recites the same legal authority for Commission jurisdiction over contracts as have been previously cited in this case, but distinguishing the purchase payment from the rate:

Appellees have strenuously defended the Commission's order on the ground that it constitutes a proper regulation of the rates and services of a utility. See KRS 278.040. They insist it is a well- established rule that the Commission has

the authority to change rates upon a proper showing and that its power may not be limited by contract because the law in force when and where a contract is made becomes a part of it. Appellees further maintain that the Commission's prior approval of the contract does not estop it from subsequently changing rates therein when necessary in the public interest. We cannot challenge the soundness of these contentions.

As appellees have pointed out, the Commission's jurisdiction extends to rates and services. However, the arguments of appellees are based on the assumption that the Commission has ordered a change in a 'rate.' We cannot accept this assumption when we scrutinize the terms of the Middlesboro contract. Water Service has an absolute obligation to pay Fern Lake Company \$17,700 annually whether or not it takes a drop of water from Fern Lake. Furthermore, it is apparent in the sales agreement that this contract to pay \$17,700 annually **was executed as an integral part of the consideration for the sale** of the water and ice properties of K. U. Fern Lake Co. v. Public Service Commission, 357 S.W.2d 701, 704 (1962) (Emphasis added)

In contrast, the agreement among Belfry and the Church clearly distinguishes the payment for the pipeline and easement and the payment for gas used at the Church. The second paragraph of the agreement refers to the "sale and assignment" of the pipeline to the Church for a fixed price - \$1,100.00 cash in hand paid. In a separate paragraph, Belfry agrees to "furnish gas" as long as it is available for an agreed to rate. Unlike the Fern Lake case, the gas rate is not part of any consideration for the pipeline. In Fern Lake the amount was fixed over 20 years. In this case the rate is for an indeterminate time and for an indeterminate amount of gas annually, which makes the "consideration" for the pipeline undeterminable. The rate is explicitly for the provision of gas. As such it is a rate for the service provided to the property.

In a case where ownership of several pipelines was disputed as were the prior contract rates charged to customers connected to those pipelines, the Commission determined the ownership of the pipelines, rejected the prior rates charged by those pipelines as well as any and all agreements, contracts or other commitments for rates and service and imposed the current tariff rates:

2. Customers.

- All current or future natural gas connections to Oakley or Hendricks gathering system pipelines shall become and shall be served as retail distribution tariff customers of Frontier. **This shall apply notwithstanding any prior agreement, contract or other commitment for service, free gas, or other special considerations among Thompson, BTU, its predecessors or former owners and property owners with natural gas connections to the Oakley or Hendricks gathering system pipelines.**

“Application of Kentucky Frontier Gas Company, LLC as Bankruptcy Operator of B.T.U. Gas Company, Inc. V. Harry Thompson, Thompson Energy Et. Al. And Other Unknown Entities” Case 2012-00028, p. 7, March 12, 2013.

The Church’s argument has another flaw. The Commission’s jurisdiction cannot be limited by contract. Yet, if the Church’s argument is correct, any property owner could draft the easement to include a fixed rate for all gas service to the property, denominate that rate as consideration for the easement and avoid Commission regulation of the rate.

Finally, as the Church acknowledges in its initial pleading, Belfry submitted the 1971 agreement to the PSC as part of its tariffs. KRS 278.160 requires utilities to file all schedules of rates and service. If the agreement was only for consideration of the easement, it would not be considered part of Belfry’s rates and service conditions. The

Commission apparently accepted it as a rate as reflected by the inclusion in the filed tariffs for Belfry.

As to the claim that no facts are in issue, that is true of the initial application by Frontier for a legal determination of the reasonableness of the rate in the agreement. The possibility of a factual dispute was raised by the Church when it included a separate, unrelated issue of service termination in its pleading. In response to that allegation, Frontier supplied Mr. Shute's Declaration, a form of verification he has used before the Commission for a number of years. This case does not involve a complaint about termination of service, it only seeks a legal declaration of the status of the existing \$0.35 per Mcf rate being paid by the Church. Remedies for alleged improper termination of service are available to the Church in a separate proceeding from this declaratory action.

Frontier moves for submission of the matter for an order declaring the rate to the Church is unreasonable and imposing the current tariff rate.

Submitted by:


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Certification:

I certify a copy of this Motion was mailed to Allyson Honaker and Mark David Goss, Goss and Samford, 2365 Harrodsburg Rd, # B325, Lexington, KY 40504 the 20th day of September, 2016.


