

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

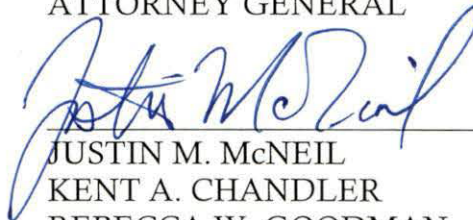
POLLITT ENTERPRISES, INC.)
WHITNEY CLARK POLLITT, INDIVIDUALLY)
AMANDA DEENN POLLITT, INDIVIDUALLY)
AND)
BASIL C. POLLITT, INDIVIDUALLY)
D/B/A THE GAS GROUP, INC.)
AKA THE GAS GROUP)
_____)
ALLEGED VIOLATIONS OF KRS 278.020,)
KRS 278.160, KRS 278.140, AND)
807 KAR 5:006, SECTION 4(2))

CASE NO.
2017-00120

ATTORNEY GENERAL'S POST-HEARING BRIEF

Respectfully submitted,

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ATTORNEY GENERAL'S POST-HEARING BRIEF

Comes now the intervenor, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and tenders the following post-hearing brief in the above-styled matter.

STATEMENT OF THE CASE

The long record of this matter is well established. A gas pipeline (the “Pollitt System”) constructed by Basil C. Pollitt (“Pollitt”) in 1992, has since been in continuous operation, transporting natural gas along a 22 mile stretch through Warren, Butler, and Edmonson, and Grayson counties in western Kentucky.¹ Pollitt ostensibly set up the corporation The Gas Group Inc. to run the pipeline, while other affiliated corporations were formed later. The proper classification of the pipeline remains at issue, while crucially, the nature of its customer mix has varied over the years. What has stayed constant throughout the pendency of this matter, and for the life of the pipeline, is that the Public Service Commission (“Commission”) maintains jurisdiction over natural gas pipelines in the Commonwealth of Kentucky—those classified as public utilities,² and those as farm tap systems.³ All of these operators are bound to comply with state and federal laws and regulations governing gas pipelines.

The gas pipeline at issue was seemingly built in order to provide natural gas to an end user, or wholesale customer. The original wholesale customer was Midwestern Pipelines, Inc.⁴ According to Pollitt, and pursuant to KRS 278.485, individuals who lived “within one-

¹ Video Transcript Evidence of August 9, 2017 Hearing (“VTE”) at 1:16:30–1:16:42; *But see* Staff Exhibit 2 (Letter to PSC from Pollitt’s former counsel, Julian Carroll, who notes that the pipeline is 28 miles long).

² KRS 278.010(3).

³ KRS 278.485.

⁴ *Basil C. Pollitt and The Gas Group, Inc. v. Commonwealth of Kentucky*, Public Service Commission, No. 2004-CA-001516-MR, 2005 WL 2573987 (Ky. Ct. App. Oct. 14, 2005) (Unpublished opinion affirming the Trial Court’s opinion granting summary judgment and a permanent injunction in favor of the Public Service Commission).

half (½) air-mile” of the pipeline tapped onto the pipeline where it crossed their property and began to receive residential gas service from the Pollitt System.⁵ In 1997, Midwestern’s contract with The Gas Group terminated, but the Pollitt System continued to provide gas to the individuals who had tapped onto the line.⁶ From 2008⁷ until 2009, Pollitt again obtained a wholesale customer, Viking Energy.⁸ From 2009 to 2017, Pollitt had no wholesale customer.⁹ In February 2017, Pollitt began a business relationship with Southern Kentucky Energy, LLC (“SKE”).¹⁰

Many of these same issues were before the Commission in a prior case involving Pollitt.¹¹ In the present matter, the Commission held a hearing on May 31, 2017, for which Pollitt was ill and no other parties attended.¹² The hearing was subsequently rescheduled. A deposition of Pollitt was scheduled for June 28, 2017, but he did not appear. On August 9, 2017 the Commission held a formal hearing which Pollitt did attend. None of the other named parties were present. Following the August 9 hearing, and at the direction of the Commission, Commission Staff (“Staff”) submitted an Order listing the outstanding contested issues in this matter.¹³ The Attorney General’s position on these contested issues are as follows.

⁵ VTE at 1:21:57–1:22:10.

⁶ *Pollitt v. Com.*, 2005 WL 2573987, at 5–6.

⁷ VTE at 3:36:35—3:39:00; *But see Pollitt v. Com.*, 2005 WL 2573987, at 6 (which cited 2003 as the year the contract with Viking began).

⁸ VTE at 3:36:35—3:39:00.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Case No. 99-00130 (Ky. P.S.C. 1999) (In this matter, Pollitt was cited for violations of KRS 278.020, KRS 278.160, 49 C.F.R. 192.615, and 49 C.F.R. 199. The Commission found the Pollitt System to be a utility and assessed civil penalties against Pollitt which totaled \$25,750.00. In 2001, the Commission filed a complaint in Franklin Circuit Court, where it sought to enforce its 1999 Order. The Court eventually granted summary judgment in favor of the Commission and entered a Permanent Injunction against Pollitt, which terminated the flow and distribution of natural gas through the pipeline.)

¹² VTE (May 31, 2017) at 9:08:30–9:09:30 (Pollitt’s counsel stated that Basil Pollitt was not present due to health issues, but that Clark had not attended on advice of counsel, saying “he simply has nothing to add He got this thing and he looked at [it] and he had no idea what any of it was about I can have him here if the Commission wants to see him. However, Clark has yet to make an appearance at any hearing or deposition.)

¹³ Order, Case No. 2017-00120 (Ky. P.S.C. August 16, 2017).

In a separate but related matter in Franklin Circuit Court, the Court directed the Commission to make a determination on whether the Pollitt System should be classified as public utility or as a farm tap/gathering line system.¹⁴ This classification goes to the heart of the matter.

ARGUMENT

I. THE POLLITT SYSTEM IS IN VIOLATION OF APPLICABLE LAW AND SUBJECT TO REGULATION BY THE COMMISSION, REGARDLESS OF WHETHER IT IS CLASSIFIED AS A PUBLIC UTILITY OR AS A GATHERING LINE/FARM TAP SYSTEM

A. The Pollitt System’s Classification as a Public Utility

The Pollitt System is a public utility, due to the nature of the line and the actions of its owners and operators.¹⁵ Pollitt argues that his pipeline is not subject to Commission regulation as a utility, that he is unequipped to confront such a regulatory burden, and that if he was unfairly and unwillingly converted from a gathering line to a utility, he has since been converted back to a gathering line with the addition of a new end user.¹⁶

In this matter, “Utility” is defined as:

[A]ny person ... who owns, controls, operates, or manages any facility used or to be used for or in connection with: ... (b) The production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power,

¹⁴ Order, Case 01-CI-581 (Franklin Cir. Ct. August 7, 2017).

¹⁵ See *Pollitt v. Com.*, 2005 WL 2573987 (Unpublished opinion in which the Court of Appeals stated: “Accordingly, we hold that the Gas Group was a utility within the meaning of KRS 278.010(3)(b), and PSC [the Commission] possessed jurisdiction in this matter”).

¹⁶ VTE at 6:16:20–6:21:20.

or other uses; (c) The transporting or conveying of gas, crude oil, or other fluid substance by pipeline to or for the public, for compensation; ...

KRS 278.010(3).

In this instance, the Pollitt System's actions constitute it as a utility. Though Pollitt claims otherwise,¹⁷ his actions have shown that he is keenly interested in continuing to provide natural gas service to the public, as he has since 1992, without regard for any mandate to do so by law. Pollitt testified that the Pollitt name is well known in the region and associated with natural gas service.¹⁸ He further testified that he personally delivers bills, collects and deposits payments, and answers service calls at the given phone number on a mobile phone which never leaves his side.¹⁹ He not only demonstrates that he always provides a minimum level of service, which is only required of public utilities,²⁰ but also holds himself out as being proud of the service he provides to the local region.²¹

Furthermore, for the years between servicing Midwestern and Viking Energy, and then following Viking, the Pollitt System has operated without any wholesale customer. The Pollitt System has operated for more years without any wholesale customers than it ever has with them. Such extended, uninterrupted service from the Pollitt System to the retail customers—about 25 years—with two brief periods of a single wholesale customer, renders Pollitt a *de facto* utility. Having held himself out as a public utility, maintaining a minimum level of

¹⁷ *Id.*

¹⁸ VTE at 1:16:40–1:17:00.

¹⁹ VTE at 1:45:20–1:46:00; 2:55:50–2:58:56.

²⁰ Data Request from Staff to Forexco, Case No. 2012-00022 (Ky. P.S.C. February 8, 2012) (The Commission has indicated that a farm tap system has no obligation whatsoever to continue servicing farm tap customers if it decides to discontinue its operation).

²¹ Basil Pollitt Et Al Response to Post Hearing Data Request, Exhibit B (Ky. P.S.C. August 23, 2017) (The letterhead used by Pollitt has a tagline towards the bottom of the page: “Meeting the energy needs of Warren, Edmundson, and Butler Counties since 1991” [*sic*]).

service, Pollitt is no longer able to magically transform his system back to a gathering line with farm taps should he acquire a single wholesale customer.

The record shows that there is no merit to Pollitt's claim that sales to the retail customers have continued only because they are mandated by statute. Pollitt's own words and actions have shown that he has held, and continues to hold, the Pollitt System out as a utility. In the present case, Pollitt seems to have contorted a previous holding by the Kentucky Court of Appeals, in an appeal which involved the previous Pollitt matter.²² The Court of Appeals, in holding that the Pollitt System was a utility, opined,

We also reject the assertion of Pollitt and the Gas Group that the natural gas line was originally a gathering line which could not be "transformed" into a distribution line. As is evidenced by this case, the character of a natural gas line is not static, but rather changes with the needs of its owner and the public. To recognize otherwise would be untenable.

Pollitt v. Com., 2005 WL 2573987, at *3.

The Court of Appeals indicates that the character of a gas line can change according to *the needs of the owner and the public*. However, this implies that the character of the line is necessarily defined by the way the customers and owner use the line. The Pollitt System still exclusively services a substantial number of retail customers. The addition of SKE does not change Pollitt's service to the retail customers. Pollitt is not in the same position as before, whereas he then serviced *bona fide* wholesale customers and only served farm tap customers pursuant to the law.

Pollitt claimed that he never intended to provide service to anyone other than a wholesale customer.²³ But Pollitt has distributed, sold, and transported natural gas to retail

²² *Pollitt v. Com.*, 2005 WL 2573987 (Unpublished opinion in which Pollitt maintained that "the character of the natural gas line should be determined at the time of its creation." The appeal stemmed from a case brought by the Commission to enforce their final judgment in Case No. 1999-00130).

²³ VTE at 1:19:00-1:19:40.

customers, in exchange for compensation for years on end, acting directly in accordance with the statutory definition of utility.²⁴ At present, he continues to distribute and sell gas to the farm tap customers, as well as transport gas for a single private corporation.

Today, in addition to serving retail customers, Pollitt has a handshake agreement with SKE, which is predicated on the transportation of natural gas.²⁵ Jason Sharp, President of SKE, testified that the only gas purchased by SKE from Pollitt is an incidental amount which is common in transportation agreements—as a way to compensate the owner of the line for the imbalance in the volume of gas flowing through the line.²⁶ The agreement with SKE is not one which resembles any of the prior wholesale customer relations as previously described, where a downstream customer bought the bulk of Pollitt's gas and sold it on. In this case, Pollitt is merely renting space on his line, allowing SKE a route to move its own gas to where it can supply its own customers. Any agreement with these facts creates a transportation arrangement, not a wholesale agreement.

Even if the pipeline was somehow able to transform back into a gathering line, the SKE agreement precludes such a scenario. For Pollitt to assert the transformation theory, he must implicitly accept that the pipeline was first transformed into a utility once the wholesale customer was lost. By Pollitt's own assertions,²⁷ only by regaining a wholesale customer, and not a transporter, would sufficiently reverse the original transformation. As Staff has noted,

²⁴ KRS 278.010(3).

²⁵ Jason Sharp Southern Kentucky Energy LLC, Response to Post-Hearing Request (Ky. P.S.C. August 21, 2017); VTE at 2:08:30–2:10:00 (Basil notes February 25, 2017 as the date agreement began, and transporting between 200–250 MCF per day through the Pollitt System); VTE at 11:21:02–11:30:08; 11:34:37–11:43:23.

²⁶ VTE at 11:36:33–11:39:59.

²⁷ VTE at 6:16:20–6:21:20.

gas sales in the SKE agreement with Pollitt are ancillary and do not constitute the purpose of the bargain.²⁸

Thus, Pollitt has not demonstrated that his system has returned to the *status quo* of a gathering line, nor that that is even possible at this point. As a result, the Pollitt System is subject to the jurisdiction of the Commission as a public utility, and bound to the laws and regulations appurtenant thereto. KRS 278.040(1) instructs that the Commission “shall regulate utilities and enforce the provisions of this chapter,” and KRS 278.040(2) further states that the Commission’s jurisdiction “shall extend to all utilities in this state,” including “exclusive jurisdiction over the regulation of *rates* and *service* of utilities” [Emphasis added].

Pollitt admits that since 2006 he has not correctly filed tariffs,²⁹ and has not filed any gross revenue, financial, or statistical reports with the Commission.³⁰ Additionally, Pollitt never did file for a CPCN.³¹ As such, he is in noncompliance with the relevant statutory and regulatory requirements for utilities.

Therefore, the Commission should find that the Pollitt System 1) failed to file for a CPCN in violation of KRS 278.020(1); 2) failed to file a schedule showing rates collected and conditions for service enforced after 2006 in violation of KRS 278.160; 3) failed to file annual reports of gross earnings from intrastate business after September 2006 in violation of KRS 278.140; 4) failed to file annual financial and statistical reports after September 2006 in violation of 807 KAR 5:006, Section 4(2); and 5) is properly classified as a distribution pipeline.

²⁸ Public Service Commission’s Motion to Alter, Amend or Vacate, 01-CI-00581 (Franklin Cir. Ct. August 16, 2017) (The related matter involving Pollitt in the Franklin Circuit Court).

²⁹ VTE at 3:39:02—3:39:39.

³⁰ VTE at 3:39:39—3:40:55.

³¹ PSC Exhibit 1, at 5–7.

B. Alternatively, Even If the Pollitt System Is Found Not to Be a Public Utility, The Commission Still Has Jurisdiction Over It as a Gathering Line With Farm Taps

If the Pollitt System is not a utility or distribution pipeline, it is a gathering line with farm taps, which is also regulated by the Commission. This is the classification under which the Pollitt System first operated and thereby allowed retail customers to tap on.³²

Should the Commission adopt Pollitt's arguments and finds that the system has "transformed" back into a gathering line, the Pollitt System falls instead under the purview of KRS 278.485. Though required under this statute, Pollitt has never correctly filed a tariff with the Commission,³³ nor did he ever file for a CPCN prior to the construction of the pipeline.³⁴

Though not subject to the same scrutiny as a utility, gathering lines still fall under the jurisdiction of the Commission, and must comply with the rules and regulations administered by it. The Pollitt System is no different. Should the Commission find that the Pollitt System is a gathering line with farm taps, it should also hold that it 1) failed to apply for a CPCN in violation of KRS 278.020(1); and 2) failed to file a schedule showing rates collected and conditions for service enforced after September 2006.

II. OWNERSHIP AND OPERATION OF THE POLLITT SYSTEM

Pollitt has maintained that he owned and exercised control over the operation of the Pollitt System through The Gas Group and Pollitt Enterprises.³⁵ His children, Clark and Amanda Pollitt, have denied any interest in the ownership or operation of the pipeline, save

³² VTE at 6:16:17-6:18:20.

³³ VTE at 3:39:02-3:39:39; Staff Exhibit 1, at 5-7.

³⁴ Staff Exhibit 1, at 5-7.

³⁵ VTE at 1:15:55-1:16:08; Clark Pollitt Et Al Joint Response to Order, at 2-3, Case No. 2017-00120 (Ky. P.S.C. June 8, 2017).

for being mere beneficiaries of one of the affiliated entities.³⁶ According to the evidence in the present record, the Attorney General believes they are indispensable parties to this matter, especially for the relevant period, post 2006. Based on their interest in the pipeline, especially in its operation, Clark and Amanda are subject to the Commission's jurisdiction.

A. Ownership of the Pollitt System

The ownership and rights to royalties from the natural gas that flows through the Pollitt System has been disputed before, in litigation, with an entity that was not mentioned at the 2017 hearing.³⁷ Therefore, any suggestion by Pollitt that the issues regarding ownership of the gas pipeline have long been settled or cannot be reasonably disputed,³⁸ should be given no weight.

Throughout the instant case, Pollitt has maintained that he alone "owned" The Gas Group and Pollitt Enterprises.³⁹ Regardless of his assertion, no proof has been provided evidencing such ownership.⁴⁰ Pollitt has maintained that his children have never held an ownership interest in the Pollitt System, nor any of its affiliated entities.⁴¹ The affiliated entities were administratively dissolved for failing to file required annual reports.⁴² Because

³⁶ Clark Pollitt Et Al Joint Response to Order, at 8–11, Case No. 2017-00120 (Ky. P.S.C. June 8, 2017).

³⁷ *Runner v. Pollitt*, No. 2004-CA-001925-MR, 2007 WL 1192036 (Ky. App. 2007)(An unpublished opinion in which the Appellate Court affirmed the Trial Court's decision to vacate the jury verdict and to direct a verdict in favor of Pollitt, holding that Runner had not met the burden of proof for fraud. It is noted that the rights to the gas well on the land of Dallas and Bessie Runner had been leased to a Wilson Carter, who then assigned the lease on September 1, 1992 to Basil Pollitt, d/b/a **Destiny Bay Energy, Inc.** On January 15, 1993, Carter reassigned his rights to the Gas Group [Emphasis added]).

³⁸ VTE at 1:15:55–1:16:08.

³⁹ VTE at 1:15:55–1:16:08; Clark Pollitt Et Al Joint Response to Order, at 2, Case No. 2017-00120 (Ky. P.S.C. June 8, 2017).

⁴⁰ VTE at 5:49:30–5:52:32 (Vice Chairman Cicero asked Pollitt whether the Federal Government would accept taxes filed by Amanda Pollitt on behalf of any of the Pollitt entities, and goes on to state that the Commission may find it hard to ignore that Clark and Amanda's names appear on so many documents).

⁴¹ VTE at 1:15:55–1:16:08; *But see* VTE at 3:56:09–3:58:30 (Where Pollitt acknowledges that Pollitt Enterprises is still in operation despite his earlier claim to the contrary).

⁴² PSC Exhibits 5; 7; 9.

of this, and due to the lack of corporate structure and process within any of the affiliated entities while they were in operation, it is unclear whether Pollitt has transferred any ownership of the entities.⁴³ Amanda and Clark may be owners of the Pollitt System.

B. Operation of the Pollitt System

Clark and Amanda have filed affidavits stating that they had nothing to do with the operation of the pipeline or the transportation of natural gas;⁴⁴ that their only interest in any of the business entities in question was merely as intended beneficiaries of Pollitt Enterprises.⁴⁵ On August 9, 2017, Clark and Amanda filed a Renewed Motion to Dismiss based on a lack of personal and subject matter jurisdiction.⁴⁶

Pollitt has noted that he used the name Pollitt Enterprises prior to the entity's formal incorporation in January 2006,⁴⁷ and that he may reincorporate an entity under this name in the future.⁴⁸ Nevertheless, in furtherance of his claim that his children had no hand in the operation of the pipeline, Pollitt stated, to wit:

Basil Pollitt had hoped that Pollitt Enterprises, if successful; would serve as a legacy for his children. It was but a hope, a dream, that never came to fruition. In 2006, Pollitt Enterprises purchased rights to an oil well in Warren County. This was a minimally producing well. Because costs greatly exceeded revenue Pollitt Enterprises discontinued production in short order. Pollitt Enterprises further purchased the rights to two gas wells also in Warren County. The

⁴³ VTE at 1:15:46–1:17:30 (Pollitt testified that he has not transferred ownership); Clark Pollitt Et Al Joint Response to Order, at 2, Case No. 2017-00120 (Ky. P.S.C. June 8, 2017).

⁴⁴ Clark Pollitt Et Al Joint Response to Order, at 8–11, Case No. 2017-00120 (Ky. P.S.C. June 8, 2017). (“During its existence neither myself nor Clark Pollitt performed any meaningful services for Pollitt Enterprises nor did we realize any financial gain from it”).

⁴⁵ Clark Pollitt Et Al Joint Response to Order, at 3, Case No. 2017-00120 (Ky. P.S.C. June 8, 2017) (“Respondents are confused by the term “Pollitt System.” As indicated in Response to Question 2, supra, neither Clark Pollitt nor Amanda Pollitt had an ownership interest in either company. Indeed they had no meaningful role in either company. No interest was transferred from the Gas Group to Pollitt enterprises. Regarding the gas lines at issue in PSC case #99-130 neither Clark Pollitt nor Amanda Pollitt have any interest therein.”)

⁴⁶ Amanda and Clark Pollitt Renewed Motion to Dismiss, Case No. 2017-00120 (Ky. P.S.C. August 9, 2017).

⁴⁷ Clark Pollitt Et Al Joint Response to Order, at 1, Case No. 2017-00120 (Ky. P.S.C. June 8, 2017).

⁴⁸ VTE at 2:48:00–2:48:35.

market would not support those wells either and production was likewise discontinued. These operations lasted less than a year and were never resumed. *This was the extent of the corporate life of Pollitt Enterprises.* Because Clark Pollitt and Amanda Pollitt ultimately were the intended beneficiaries of Pollitt Enterprises they were listed as its officers and incorporators in the filings with the Secretary of State. They did not have any ownership interest in it. Basil Pollitt managed all affairs of Pollitt Enterprises and absorbed all losses associated with the failed efforts set forth above. Pollitt Enterprises died on the vine as it were and was administratively dissolved by the Secretary of State in 2010. *During its existence neither Clark Pollitt nor Amanda Pollitt performed any services for Pollitt Enterprises* nor did they realize any financial gain from it ... *At no time was Pollitt Enterprises engaged in the transport of oil or natural gas ... [a]t no time did Pollitt Enterprises have any interest in the gas lines at issue per PSC case # 99-130.*

Clark Pollitt Et Al Joint Response to Order, p. 1–2, Case No. 2017-00120 (Ky. P.S.C. June 8, 2017) [Emphasis added].

However, portions of this statement have been shown to be demonstrably false. Pollitt Enterprises did not cease operations in 2010,⁴⁹ Pollitt Enterprises was shown to be continuously engaged in the transport of natural gas through the Pollitt System,⁵⁰ and Clark Pollitt was shown to have significant involvement in the business of the pipeline—as President of Pollitt Enterprises.⁵¹ As the pipeline is currently being operated under the Pollitt Enterprises name,⁵² with an associated checking account,⁵³ these facts bear more significance. Evidence produced at the hearing revealed that Clark and Amanda had a much more

⁴⁹ PSC Exhibit 3 (Showing ongoing use of the Pollitt Enterprises email account); VTE at 3:56:09–3:58:30.

⁵⁰ VTE at 3:56:09–3:58:30; Deposition Exhibit 5 (Certified Copy of Active Operator List as of June 9, 2017, Kentucky Division of Oil & Gas).

⁵¹ Attorney General Exhibit 1; VTE at 5:47:18–5:49:30.

⁵² VTE at 3:56:09–3:58:30; Deposition Exhibit 5 (Certified Copy of Active Operator List as of June 9, 2017, Kentucky Division of Oil & Gas).

⁵³ Basil Pollitt Et Al Response to AG Post Hearing Data Request, at 5, Case No. 2017-00120 ((Ky. P.S.C. August 23, 2017) (This is despite Pollitt’s insistence that the only bank account related to the pipeline was under the Gas Group name); *Id.* (Pollitt submitted the image of a check made payable to the Kentucky State Treasury for payment of the Gathering Line Operator License Renewal in 2016, for permit number 184556).

expansive role in the operation of the pipeline than had been previously disclosed, and that role is seemingly ongoing.⁵⁴

Clark signed the Articles of Incorporation for The Gas Group Inc. as Vice President, and listed his home address as the entity's registered Kentucky office.⁵⁵ In the 2008 and 2009 Annual Reports for The Gas Group Inc., Clark's title was listed as Vice President.⁵⁶ Pollitt suggested that Clark accompanied him to a meeting in Bowling Green with Jason Sharp of SKE during which the pipeline would be discussed, but said that since he had been in poor health, Clark had merely come along to drive him.⁵⁷ Mr. Sharp remembered receiving a business card and produced said card in post-hearing discovery, which clearly denotes Clark Pollitt as President of Pollitt Energy Inc.⁵⁸

Clark also acted as President of Pollitt Enterprises, signing documents in the same capacity.⁵⁹ Later in the hearing, Pollitt acknowledged that multiple documents were signed by Clark acting as an operator and officer of Pollitt Enterprises.⁶⁰ His actions show that he does in fact have direct or indirect control over the operation of the pipeline, and is subject to the jurisdiction of the Commission.

⁵⁴ Jason Sharp Southern Kentucky Energy LLC Response to AG Post-Hearing Request, at 2, Case No. 2017-00120 (Ky. P.S.C. August 21, 2017); PSC Exhibit 3; VTE at 11:54:03–11:56:59.

⁵⁵ PSC Exhibit 7, at 2; VTE at 2:16:00–2:18:00.

⁵⁶ PSC Exhibit 7, at 3–4.

⁵⁷ VTE at 11:50:42–11:52:16 (During cross-examination, Pollitt's counsel asked Jason Sharp if Clark was present at the meeting to drive due to Pollitt's bad health. Witness Sharp responded that it "very well could have been the case. I don't recall if that was said during the meeting or not").

⁵⁸ VTE at 12:05:04–12:07:10; Jason Sharp Southern Kentucky Energy LLC Response to AG Post-Hearing Request, p. 2, Case No. 2017-00120 (Ky. P.S.C. August 21, 2017).

⁵⁹ Attorney General Exhibit 1; VTE at 5:47:18–5:49:30.

⁶⁰ Attorney General Exhibit 1 (Clark signed documents as CEO/COO of Pollitt Enterprises on January 26, 2006, and as an authority in changing the principal office address of Pollitt Enterprises on August 23, 2006.); PSC Exhibit 12 (Clark signed an Annual Reports of Monthly Production for submission to the Division of Oil and Gas as President of Pollitt Enterprises on February 5, 2007, February 22, 2009, March 7, 2010, and February 23, 2015. The final date occurs after the administrative dissolution of Pollitt Enterprises on November 2, 2010, when the entity supposedly "died on the vine").

Amanda's name is tied to the Pollitt Enterprises email address,⁶¹ though Pollitt denied that she knew her name was on the account.⁶² Amanda was listed as the Vice President for Pollitt Enterprises and Pollitt Energy Inc.⁶³ She was also one of the two incorporators—Clark being the other—of The Gas Group Inc., Pollitt Enterprises, and Pollitt Energy Inc.⁶⁴ Amanda's residential address was listed as the principal office for each of these entities.⁶⁵ Additionally, the Certificates of Dissolution for The Gas Group Inc., Pollitt Enterprises, and Pollitt Energy Inc. were sent to her Florida address on November 2, 2010.⁶⁶

The Pollitt System continues to operate to this day under the Pollitt Enterprises name. Clark still holds himself out as President of Pollitt Enterprises and an affiliate. The email conversation between Pollitt Enterprises and SKE copied Clark directly and originated from an account with Amanda's name on it. Based on the evidence presented, Clark and Amanda both participated directly in the operation of the pipeline, especially more so than they would have had they been mere beneficiaries of one affiliated entity. Therefore, the Commission should find that it does have jurisdiction over Clark and Amanda Pollitt.

CONCLUSION

At the hearing, Pollitt claimed multiple times that this entire situation could have been avoided or ameliorated through a phone call or approach from the Commission to him.⁶⁷ In fact, Pollitt has ignored or fought any attempt from the Commission to bring him into

⁶¹ PSC Exhibit 3.

⁶² VTE at 1:51:14–1:52:50.

⁶³ PSC Exhibit 5; Attorney General Exhibit 1.

⁶⁴ PSC Exhibits 5, 7; Attorney General Exhibit 1.

⁶⁵ PSC Exhibit 7, pg. 2; VTE at 2:16:00–2:18:00, 2:38:25–2:42:00 (Pollitt confirms this address is Amanda's home address); Attorney General Exhibit 1.

⁶⁶ PSC Exhibit 7, pg. 5; PSC Exhibit 9; PSC Exhibit 5, pg. 7.

⁶⁷ VTE at 3:39:45–3:40:40; 5:51:35–5:52:24; 5:59:53–6:00:16; 6:20:00–6:21:00.

compliance with any regulation for close to two decades.⁶⁸ Had any phone call occurred, the same assertions which were made in sworn affidavits and later proven to be untrue—namely, that Pollitt Enterprises never transported gas and that neither of the children performed services for the pipeline—would have been put forth as the truth in order to conclude the matter. Regardless of the respondents’ denials, the Pollitt System is subject to Commission regulation irrespective of its classification. Though Pollitt often points to the lack of any incidents in the operation of the pipeline,⁶⁹ this does not excuse nor condone his refusal to follow the regulations and procedure as every other utility and farm tap system in the Commonwealth is required to do. Ultimately, consumers’ interests are paramount, especially their safety. It is this interest which compels the Commission to bring Pollitt into compliance.

At this time, Pollitt has still not provided the Commission with all of the requested discovery, which is necessary in order to definitively prove ownership and operation of the Pollitt System. The record in this case is replete with information which contradicts Pollitt’s positions regarding the ownership and operation of the Pollitt System. Many of Pollitt’s representations regarding basic facts have been disproven or called into question. Given this,

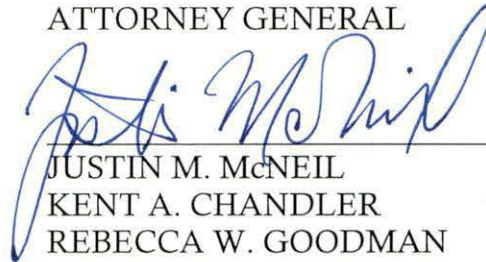
⁶⁸ See Case No. 1999-00130; *Pollitt*, 2005 WL 2573987; Basil Pollitt Et Al Response to Post Hearing Data Request, Exhibit D, pp. 12—18, Case No. 2017-00120 (Ky. P.S.C. August 23, 2017) (In response to Staff’s post-hearing data requests for leakage surveys and patrol reports from 2011 to July 2017, Pollitt provided documents which contain remarkably similar wording, with the only seeming difference being the numerical pressure in the pipeline on each report); VTE at 2:10:00—2:10:45, Basil Pollitt Et Al Response to Post Hearing Data Request, at 1–2, Case No. 2017-00120 (Ky. P.S.C. August 23, 2017) (Pollitt testified that SKE was currently buying gas and not transporting, and that he had an invoice to support this. However, in his post-hearing response he said that he had “no documents responsive to this request”); *Id.* at 1 (In this matter, Pollitt has demonstrated a continued unwillingness to cooperate and, at times, a deliberate aim to obfuscate. Pollitt declined to provide written responses to the Attorney General’s Request for Information, instead objecting and arguing that the Attorney General lacks the authority to request such information); Basil Pollitt Et Al Response to AG Post Hearing Data Request, Exhibits A–B, Case No. 2017-00120 (Ky. P.S.C. August 23, 2017) (Upon receipt of documents provided pursuant to the Attorney General’s post-hearing data request, Pollitt improperly redacted portions of the documents making it impossible to garner evidence from the documents, which was the purpose of the request).

⁶⁹ VTE at 6:16:20—6:21:20.

it is imperative that the Commission exert its regulatory control over the Pollitt System and enforce those statutes and regulations which it finds properly apply to Pollitt.

Respectfully submitted,

ANDY BESHEAR
ATTORNEY GENERAL

A handwritten signature in blue ink, appearing to read "Justin M. McNeil", is written over a horizontal line.

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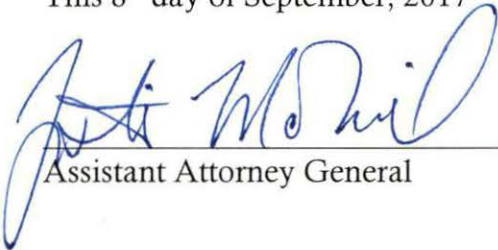
Certificate of Service and Filing

Counsel certifies that an original and ten (10) photocopies of the foregoing were served and filed by hand delivery to Mr. John S. Lyons, Acting Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; counsel further states that true and accurate copies of the foregoing were mailed via First Class U.S. Mail, postage pre-paid, to:

Pollitt Enterprises, Inc.
Reg. Agent Whitney Clark Pollitt
12004 Ridge Road
Louisville, KY 40245

Kirk Hoskins
The Landward House
1387 S Fourth St
Louisville, KY 40208

This 8th day of September, 2017


Assistant Attorney General