

RECEIVED

COMMONWEALTH OF KENTUCKY  
PUBLIC SERVICE COMMISSION  
CASE #: 2017-00120

OCT 30 2017

PUBLIC SERVICE  
COMMISSION

IN RE:

BASIL C. POLLITT, INDIVIDUALLY  
D/B/A THE GAS GROUP, INC.  
A/K/A THE GAS GROUP.

**BRIEF OF RESPONDENTS, BASIL POLLITT AND THE GAS GROUP INC.**

**PROCEDURAL BACKGROUND**

1. This matter was before the Commission per a hearing on 8-9-17. Basil Pollitt appeared on behalf of himself and as the sole owner of The Gas Group. Amanda Pollitt and Clark Pollitt, children of Basil Pollitt did not appear personally. Conversely, the Pollitt children appeared by counsel and moved to be dismissed from this proceeding as the Commission lacks jurisdiction over them both personal and subject matter. Arguments related to jurisdiction are nonetheless contained in this brief.<sup>1</sup>

2. Basil Pollitt and The Gas Group (hereinafter “Gas Group”) concede confusion as to where matters presently stand. Following the hearing Gas Group moved the Commission for clarity regarding the issues to be determined. The Commission, from the bench, agreed. Toward that end

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The honorable Nancy Vinsel appeared on behalf of the PSC. The honorable Kent Chandler and Justin McNeil appeared on behalf of the Attorney General, Office of Rate Intervention. Regarding the latter Gas Group objected to its intervention into this case as same is authorized by neither KRS 367.150 (8) nor 807 KAR 5:001 Section 4 (11). Conversely, KRS 278.040 limits jurisdiction over utilities to the Public Service Commission and provides that it has “exclusive jurisdiction” over “rates and services”. Irrespective of same the Commission denied the motion thus permitting the Office of Rate Intervention to intervene per Order entered 8-23-17. The Gas Group renews its objection to the intervention of the Office of Rate Intervention.

an Order clarifying issues was entered 8-16-17. Following the hearing a number of “post hearing data requests” were submitted. These were followed by additional post hearing data requests. Additionally, per an Order entered 9-19-17 PSC seeks an inspection of Pollitt’s home, unspecified records as well as the gas line. As a result the record in this matter is ever expanding. This results in uncertainty as to the evidence of record and what PSC might use against Gas Group in this matter.

### **THE PARTIES**

3. At all stages of this proceeding Respondents are referenced collectively as the “Pollitt System”. It appears this term is intended to include Basil Pollitt, The Gas Group, Pollitt Enterprises and Pollitt’s children, Amanda Pollitt and Clark Pollitt. The gas line at issue herein was at all times owned and operated by The Gas Group. The sole evidence to the contrary was a gas line marker indicating “Before Excavating or in Emergency call: Pollitt Enterprises, Inc., 1-270-303-9236, Day or Night”.<sup>2</sup> Ex. A, attached hereto, Attachment A to Commission Order of 3-15-17. Pollitt explained per his Response to the 3-15-17 Order that Pollitt Enterprises was formed years ago in the hopes of producing oil and natural gas from wells located in Warren and neighboring counties. Pollitt has tried to keep the wells and the gas line separate and distinct to the extent possible.<sup>3</sup> Neither PSC nor ORI seem to recognized this distinction which the documents of record confirm. Cf, e.g., PSC Exhibits 1 and 2 with PSC Exhibit 12. At any rate the genesis for using the Pollitt Enterprises marker (Ex. A) was an effort to placate concerns of PSC. Toward that end inspector

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It is noteworthy that the line marker indicates only that Pollitt Enterprises is the entity associated with the local number. It does not indicate ownership of the gas line.

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An exception to this is the recent business relationship with SKE. In that circumstance the gas line usage and gas sales are combined and billed by Gas Group as a matter of convenience. If necessary Pollitt could separate the two although there seems little point to it.

David Kinman requested that the markers contain a local phone number (the prior marker of Gas Group contained an "800" number). See Response to the 3-15-17 Order. The warning posters were already in existence and in use on the well property and contained a local number. Id. Moreover, excavators and local authorities were familiar with the Pollitt name. Id. Accordingly, when a Gas Group marker was worn and/or required replacement the Pollitt Enterprises marker was substituted. Id. This simple, innocuous act has resulted in allegations that Pollitt has transferred ownership of the gas line which has in turn devolved into an effort to ensnare Amanda and Clark. The entirety of the transfer allegation is built on sand and makes no sense. If Pollitt was attempting a surreptitious transfer of the gas line it is odd that he would advertise it by posting signs. The line marker was the only evidence presented regarding the transfer issue. At any rate Gas Group objects to use of the term "Pollitt System" as a collective reference as it is unclear as to the parties referenced thereby and serves as a means for including Amanda and Clark in this proceeding.

### **FACTUAL BACKGROUND**

3. While the 8-16-17 Order contains no specific reference to terminating the gas line via enforcement of the 3-2-04 Order of the Franklin Circuit Court the PSC Order of 3-15-17 does. Toward that end in the midst of the instant proceeding PSC moved the Franklin Circuit Court for enforcement of the 3-2-04 Order (inclusive of its injunctive aspects) and to hold Pollitt in contempt. The positions of PSC are incongruous as it treats Basil Pollitt/Gas Group as the owner of the gas line in the Franklin Circuit Court but maintains he is not the owner per the instant proceeding. In any event the Franklin Circuit Court refused enforcement of the 3-2-04 Order and in so doing concluded what Pollitt has maintained all along—that the statutory/regulatory framework was not intended to address the instant situation whereby a gathering line containing statutorily mandated farm taps

converts into a public utility upon the loss of an end user. All efforts in this regard are an exercise in driving a square peg into a round hole. The Franklin Circuit Court Order of 8-7-17 directs administrative consideration of whether Gas Group's usage is consistent with a gathering line. If so the statutes/regulations governing utilities have no application.

4. Because whether current usage is consistent with a gathering line is the paramount legal issue Gas Group will address it first. Prior to doing so however several other facts require mention and development. The record is void of the source of the single minded viciousness with which PSC and ORI pursue Pollitt. It enjoys no precedent as Pollitt is the only gathering line operator burdened by farm taps subject to transformation into a public utility. To the best of Pollitt's knowledge and belief he is a minority of one. The reasons underlying the Inspector Javert style inquiry is a mystery to Pollitt. Only as afterthoughts do PSC and ORI mention "safety". There is no substance to this as Gas Group has operated the line and facilitated the farm tap customers for 25 years with no safety related issue, concern or complaint. There was no evidence, either documentary or testimonial, that sets forth a safety related concern.<sup>4</sup> Nor is the treatment of Pollitt justified on the basis of concern for the consumer. Each and every one of the farm tap customers has petitioned the Commission and in so doing advised of their satisfaction, if not appreciation, of the high quality, low cost, service received from Gas Group. Although ORI indicates in conclusory fashion that it has intervened in this matter to protect consumer interests this is but rhetoric that stands in stark contradiction to its

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To say that the Gas Group line has received individualized scrutiny by PSC is an understatement. In spite of same it has reported no safety related concerns. Per a hearing in the Franklin Circuit Court on or about 9-18-02 Inspector Kinman testified without qualification that the line was in compliance with all safety regulations. What has occurred since that time to render the line out of compliance is unstated. Per the 8-9-17 hearing it appeared that PSC "inspected" the line not less than 4 times since 2007. No violations or safety concerns were noted.

actions. Indeed, there was no evidence, either testimonial or documentary, that consumer concerns played any role per the instant proceedings. Conversely, the interests of the farm tap customers are recklessly trampled underfoot.<sup>5</sup> The farm tap customers have spoken loudly and clearly: they do not want and do not need the “help” of PSC or ORI. Indeed all actions against Pollitt are best described as a draconian solution in search of a problem.

5. Several statutory provisions provide the frame of reference for Commission review. KRS 353.500 provides that it is the public policy of this Commonwealth to encourage the maximum production of oil and natural gas. This public policy is furthered by requiring farm taps as KRS 278.485 provides it is incumbent upon a gas line operator to permit a land owner within ½ mile of the line to “tap” onto it thus obtaining natural gas service.<sup>6</sup> To date Pollitt’s biggest error was naivete in believing that the public policy meant what it said and that state government would act in support of, not against, his efforts which include the construction of the pipeline, an approximate \$750,000 endeavor. Any consideration of Gas Group’s operations not informed by the public policy of encouragement, not discouragement, of natural gas production and efficient transport overlooks the forest for the trees.

6. It is not possible to disgorge this case from the prior administrative action (99-130) and the Franklin Circuit Court action (01-CI-581). The Administrative Order (99-130) found Gas Group in violation of KRS 278.020 (failure to obtain a Certificate of Necessity and Public Convenience)

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ORI’s “concern” for consumers is illustrated by its objection to entry of the petition into the record.

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The Department of Energy Development and Independence was created in an effort to realize this public policy. The 2015 Energy Profile discloses that the Commonwealth’s natural gas reserves are underutilized. See pgs. 66-68.

and KRS 278.160 (failure to file a schedule of rates and service [tarriff]). Regarding the former the farm taps were begun because Gas Group was statutorily mandated to provide them. Stripped to its core the violation stems from Gas Group failing to obtain and file a document indicating that the public need and convenience is served in the course of providing the very service the law requires. Regarding the latter Gas Group did file a tariff which for whatever reason was not acted upon by PSC. Additionally, Gas Group disclosed its rates to Inspector Kinman. At no time and in no manner has PSC suggested that the rates are in any way unfair or unreasonable. The violation is pure form and no substance. The 9-2-99 Administrative Order further cites The Gas Group for a number of regulatory violations:

a) 49 CFR 192.707 (a)--A \$5,000 fine was assessed for not having a line marker at the highway road crossing. This violation was corrected immediately.

b) 49 CFR 192.707 (e) (2)--A \$10,000 fine was assessed because the line marker that the Gas Group did not provide in the first instance did not contain an emergency telephone number. Thus the PSC has assessed two separate fines for the same conduct.

c) 49 CFR 192.615--A \$5,000 fine was imposed for the Gas Group not having submitted an emergency plan to the Richlandville Fire Department. This too was rectified immediately. In the process Pollitt learned that no other operator had submitted such a plan.

d) 49 CFR 199--The Gas Group was assessed a fine in the amount of \$5,000 for failing to have an alcohol and drug testing program for its employees even though it has no employees.

In summary PSC imposed \$25,000 in fines as a result of Gas Group not having a pole containing a name, address and phone number at the point the gas line crossed the highway; not having notified the Richlandville Fire Department of its line (something no other gas line operator in the area had done) and not having in place an alcohol and drug testing program for its employees even though it

has no employees. The assessment of maximize fines in the face of immediate remedial measures is contrary to both the letter and spirit of KRS 278.992 which provides that in assessing fines PSC is to consider the size of the operator, the gravity of the violation(s) and the good faith efforts to remedy the violation(s). Prior to taking judicial action in the Franklin Circuit Court (01-CI-581) PSC became aware that the Administrative Order, at least in part, was either inaccurate or had been superseded. The 4-28-00 letter of Dale Wright references a PSC Order dated 3-23-00 indicating no Certificate of Necessity and Public Interest is required. Ex. B, attached. Gas Group Hearing Exhibit 3. Moreover, Gas Group filed a tariff not later than 5-8-00. Ex. C, attached, PSC Hearing Ex. 1. The tariff was rejected for unknown reasons however no notice of same was provided Pollitt. Id. In short, PSC was aware that aspects of the 9-2-99 Administrative Order were in error and/or had been superseded when it sought judicial enforcement. It sought and obtained enforcement anyway.

7. The 3-15-17 Order which serves as the initiating document per the instant proceeding contains the following alleged violations: a) KRS 278.020 (failure to obtain CNPC); b) KRS 278.160 (failure to file tariff); c) KRS 278.140 (failure to report intrastate sales; and d) 807 KAR 5:006 Section 4 (2) (failure to file financial and statistical reports). PSC thus cites Pollitt for failing to comply with operational rules while at once denying that he is authorized to operate. As indicated Gas Group's status as a utility is central to all of the alleged violations. The post hearing "clarification" Order (8-16-17) contains additional alleged violations: e) KRS 278.020 (6) (whether assets of the "Pollitt System" were sold or transferred to Pollitt's children without Commission approval), and f) KRS 278.02 (7) (whether the Pollitt children exercise control over the "Pollitt System"). The dominant issue however is whether the Gas Group line is classifiable as a "gathering line". The final issue concerns whether the Commission has jurisdiction, both personal and subject

matter, over Amanda and Clark.

8. Given that the classification of the pipeline is paramount facts related to it require attention. Pollitt testified that he has entered into a contractual relationship with Southern Kentucky Energy, a natural gas wholesaler that operates a well in Grayson County. Jason Sharp testified of SKE's efforts to expand its business in the area and is under contract to supply gas to Real Alloy, a manufacturing company located in Morgantown. Sharp testified of the need to utilize the Gas Group line to transport gas southward. He further testified that in addition to using the line he purchases Gas Group gas. While this arrangement is in its beginning stages SKE is hopeful, if not confident, of significant growth. This will require a more intense and frequent use of the line and the increased purchase of Gas Group gas. The current transport and gas charges are reflected on PSC Hearing Ex. 6. Sharp's testimony concerning the SKE-Gas Group relationship was completely consistent with Pollitt's and reflects that the Gas Group line has a wholesale end user. Moreover, in response to document requests, SKE produced cancelled checks which confirmed that all business was conducted only with Gas Group. Finally, Sharp testified that when conducting business with Gas Group he dealt with Pollitt and only Pollitt. This too is completely consistent with Pollitt's testimony. Indeed there was no proof of any involvement by the Pollitt children. Following the hearing PSC moved to "Alter, Amend or Vacate" the Franklin Circuit Court's Order of 8-7-17 on the basis that Pollitt testified falsely vis a vis the business relationship with SKE. In so doing the testimony of Sharp was mischaracterized to the point that it was unrecognizable. Accordingly, Pollitt has obtained an affidavit from Sharp confirming his testimony and the business relationship with Gas Group as described herein. Ex. D, attached. Sharp further swears that certainty regarding a continuous, ongoing relationship with Gas Group is necessary for SKE to expand its production



of Kentucky natural gas and the sale of same to Kentucky businesses. Uncertainty impedes those efforts.

### **LEGAL ARGUMENT**

9. That Gas Group has regained a wholesale end user is not subject to dispute. The testimony of Pollitt and Sharp was unequivocal and supported by proof of payment. Gas Group Ex. 4 and PSC Ex. 6. There was no contradiction of this proof only an effort at minimizing it. Toward that end per the aforementioned motion to “Alter, Amend or Vacate” PSC argued the gas sales were only intended to rectify a “transportation imbalance”. That this is a distortion of the record is almost beside the point. The fact not disputed is that SKE is a wholesaler and in that capacity purchases gas from Pollitt. The reason underlying the purchase or the volume is irrelevant. More importantly, PSC concedes that SKE, a wholesaler, continuously utilizes the Gas Group line to transport significant amounts of its intrastate gas to an intrastate end user. PSC treats SKE’s use of the line as having no bearing on a gathering line analysis. This is not so. The term “gathering line” is defined in two separate sections of the administrative regulations. 807 KAR 5:026, Section 1 (5) provides:

“Gathering line” means any pipe which carries uncompressed gas and which is used to gather gas from a producing gas well.

805 KAR 1:190, Section 1 (5) provides:

"Gathering line" means any pipeline that is installed or used for the purpose of transporting crude oil or natural gas from a well or production facility to the point of interconnection with another gathering line, an existing storage facility or a transmission or main line, including all lines between interconnections, except those lines or portions thereof subject to the exclusive jurisdiction of the United States Department of Transportation under 49 C.F.R. Parts 191, 192, 194 and 195.

As is self evident the two definitions are, as a practical matter, identical. A gathering line transports natural gas. The owner of the gas being transported plays no role in the classification. It is of no

moment whether the line carries Gas Group gas or SKE gas. The sole consideration is whether the transporter is a wholesaler. That ends the analysis. While Gas Group disputes in emphatic terms that it sells only negligible amounts of its gas to SKE that does not impact upon the line classification. Moreover, Pollitt's testimony concerning increased gas sales in the future is in keeping with the testimony of Sharp. The wild card in this relationship is PSC. Efforts at terminating Gas Group's operations creates uncertainty as to its ability to continue selling and transporting gas. This uncertainty in turn impacts upon the willingness of SKE and its customers to make more substantial, longer term, commitments. The line was created for the purpose of transporting gas for a wholesale use. The farm taps were at all times incidental. The line has returned to its intended use and is a gathering line by definition.

10. Gas Group is not in violation of KRS 278.020 and was never in violation of KRS 278.020. The Wright letter of 4-28-00 makes clear that a CPNC is not required. This admission is further supported by the referenced Order of 3-23-00.<sup>7</sup> Fairness dictates that this obviates the 9-2-99 Administrative Order and the subsequent enforcement action. Moreover, as indicated, KRS 278.020 applies only to a public utility. Because Gas Group operates a gathering, not distribution, line it is not a public utility and is not subject to the statute.

11. Similarly, Gas Group is not in violation of KRS 278.160 and was never in violation of this statute. PSC Hearing Ex. 1 demonstrates that Pollitt first filed a tariff in January of '93. He later filed a tariff in May of 2000. *Id.* There is no indication that PSC acted on either document other than to allege Pollitt had never filed it. Again, this should act to obviate the 9-2-99 Administrative

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Gas Group has requested the 3-23-00 Order but PSC has declined to produce it.

Order. Moreover, as indicated KRS 278.160 applies only to a public utility. Because Gas Group operates a gathering, not distribution, line it is not a public utility and is not subject to the statute.

12. KRS 278.140 relates to the reporting of intrastate gas sales. This is a technical, non substantive, clerical violation which Gas Group has corrected in any event. Pollitt Response to Post Hearing Data Requests, # 1. Pollitt testified, without contradiction, that annual sales are in the approximate amount of \$8,000 and the farm taps operate at a substantial loss. As indicated in the factual summary, supra, there is a schizophrenic quality to this alleged violation. PSC at once pursues Gas Group because it maintains inadequate records of its operations while denying that it has the right to operate. Again, this statute is inapplicable to Gas Group given its status as a gathering line. Moreover, Pollitt consistently reported annual production to the Division of Mines and Minerals. PSC Hearing Ex. 12.

13. 807 KAR 5:006, Section 4 (2) is also a non substantive, clerical, regulation applicable only to utilities. Gas Group incorporates its response contained in numerical paragraph 12, supra.

14. Gas Group herewith combines its response to the alleged violation of KRS 278.020 (6) and (7) as these statutes operate as two sides of the same coin.<sup>8</sup> These two statutes are the basis for ensnarling Amanda and Clark. Analysis begins with reference to the 3-15-17 Order which provides: “Further any acquisition or control (of a public utility) without prior authorization ***shall be void and of no effect***”. Emphasis added. Effectively, even if there was proof that the assets and control of Gas Group were transferred to Amanda and Clark, which there is not, such a transfer is a legal

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KRS 278.020 (6) proscribes the transfer of assets of a public utility absent Commission approval while KRS 278.020 (7) proscribes assuming control over a public utility absent Commission approval.

nullity. That is to say any such transfer is harmless as it has no legal effect. Because any such transfer is a legal nullity it can not provide a means for treating them as a public utility and/or asserting jurisdiction over them. Moreover, as indicated in the factual summary, supra, the only proof of a “transfer”, was the signage identifying Pollitt Enterprises as the entity to contact in the event of emergency. From here PSC concludes that ownership of the line was transferred to Pollitt Enterprises (also owned solely by Pollitt) apparently to escape its notice. PSC then searches the Secretary of State web site and learns that Amanda and Clark are incorporators/officers of the long since defunct corporation. It then attempts to hold them personally liable for the alleged violations associated with Gas Group solely as a result of their status as officers: “The Commission included Clark and Amanda Pollitt as parties to case No. 2017-120 in their individual capacity in compliance with Kentucky law because officers of an administratively dissolved corporation are personally liable for transacting any business except that necessary to wind up and liquidate its business and affairs.”<sup>9</sup> KRS 14A.7-020 and Martin v. Pack’s Inc., Ky. App., 358 S.W.3d 481 (2011) are cited as authority for this proposition. KRS 14A.7-020 provides no authority for assessing personal liability against an officer of a defunct corporation. Conversely, it sets forth the procedure for the dissolution process. Martin addresses the issue of whether corporate immunity survives a dissolution vis a vis a corporate owner who personally enters into a contractual relationship and personally benefits from it. PSC ignores the critical fact upon which Martin is based that distinguishes it from the instant case. Liability against Martin was based on his actions (entry into a contract) from which he, as a corporate owner, personally benefitted. Under this circumstance he was not entitled to corporate

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PSC Combined Response Memorandum of 7-3-17 at pg. 5.

immunity. Indeed, the facts of Martin are such that it is likely that he (Martin) would not have enjoyed corporate immunity even if the corporation had not been dissolved. It is important to recognize what Martin is not. ***It does not stand as authority for liability based on mere status as a corporate officer.*** Upon dissolution a corporate officer is liable only if he/she engages in conduct that would make him/her liable under existing contract/tort principles. Martin does nothing to create personal liability against an officer who has taken no action that would otherwise subject him/her to liability. Here the record is void of ***any*** action taken by Clark or Amanda. Liability is predicated solely on status. The sole mention of Clark related to his appearance at a meeting between Basil Pollitt and Jason Sharp. Both Basil Pollitt and Sharp testified that Clark was merely present and did not participate in the meeting. Basil Pollitt testified, and Sharp concurred, that Clark was present only because he drove his father, who was recovering from colon cancer, to the meeting. Driving Basil Pollitt to a meeting proves nothing and provides no basis asserting personal liability. Regarding Amanda there was no mention of any action of any type taken by her. It seems her sole “involvement” is that she is the account holder per Pollitt’s internet service thus emails appear under her name. This provides no basis for asserting personal liability. Moreover, it was not disputed that at all times relevant herein Amanda was (and remains) a Florida resident who has had no contacts, substantial or otherwise, with this Commonwealth such that she is subject to the “long arm statute”. See KRS 454.210 and Caesar’s Riverboat Casino v. Beach, KY, 365 S.W.3d 51 (2011). As such PSC lacks personal jurisdiction as well. The 3-15-17 Order simply declares that Amanda and Clark are public utilities. As set forth herein that declaration is supported by neither fact nor law. Amanda and Clark are not proper parties to this proceeding and the Commission has no jurisdiction over them. Accordingly, it should dismiss them from this action.

## CONCLUSION

15. For the reasons set forth herein Gas Group moves the Commission to: a) dismiss all allegations; b) revisit and revise the 9-2-99 Order as same, at least in part, is based on error; c) declare that the Gas Group line is a gathering line; d) dismiss ORI as a party to this proceeding; and e) dismiss Amanda and Clark from this proceeding.



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## CERTIFICATE OF SERVICE

It is hereby certified that an original and 10 copies of this Brief was sent via U.S. Mail to the Public Service Commission, P.O. Box 615, 211 Sower Blvd. Frankfort, KY 40602-0615 this 27<sup>th</sup> day of October, 2017. It is hereby further certified that a copy of this Response was mailed to the Office of Attorney General, c/o Kent Chandler/Rebecca Goodman/Justin McNeil, Assistant Attorney General, Office of Rate Intervention, 700 Capital Avenue, Suite 20, Frankfort, KY 40601 and Nancy Vinsel, Counsel for the PSC, 211 Sower Blvd. Frankfort, KY, 40601-0615 this 20<sup>th</sup> day of September, 2017.



**EXHIBIT A**

# **GAS PIPELINE**

**Before Excavation**

**CALL EMERGENCY**

**Call**

**1-800-4-A-SAFE**

**1-210-303-0220**

**Day or Night**



**EXHIBIT B**



Paul E. Patton, Governor  
Ronald B. McCloud, Secretary  
Public Protection and Regulation  
Cabinet

Martin J. Huelsmann  
Executive Director  
Public Service Commission

COMMONWEALTH OF KENTUCKY  
PUBLIC SERVICE COMMISSION  
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(502) 564-3940  
Fax (502) 564-3460

B. J. Helton,  
Chairman

Edward J. Holmes  
Vice Chairman

Gary W. Gillis  
Commissioner

April 28, 2000

Honorable Julian M. Carroll  
25 Fountain Place  
Frankfort, Kentucky 40601

Re: Rate Filings  
Basil C. Pollitt d/b/a The Gas Group, Inc.  
Case No: 99-130

Dear Governor Carroll:

Enclosed you will find a copy of an Order issued by the Commission on March 23, 2000. It appears to me that the substance of this Order would apply to Basil Pollitt. It is my general understanding that The Gas Group's pipeline was constructed to provide natural gas to a major transportation line, and the intervening consumers, and now current customers, were the farm taps. In that configuration, the Public Service Commission had no regulatory authority save and except safety issues.

Now I understand that the major transportation line is no longer the end-user. This converts The Gas Group's pipeline into a local distribution system. At any rate, The Gas Group's distribution pipeline was constructed in the early 90's and has "transformed" into a distribution system. As such, it is subject to PSC regulation, but the enclosed Order clearly indicates that no Certificate of Public Convenience and Necessity is needed. I suspect it would be a good idea to submit some type of "as-built" plans detailing the system and where its various valves and other mechanical features are located.

Also enclosed is a blank copy of the "Rates, Rules and Regulations" which form the basis of a tariff. In addition, enclosed is the completed tariff for Citypower, LLC, which went into effect in September 1998. This material should provide you with guidelines to construct a cover letter explaining the background and development of the pipeline and the company called The Gas Group, Inc. As I have already advised, the deadline for this filing is May 10. If there is any further delay, correspondence and contact should be made with Honorable Martin J. Huelsmann, Executive Director of the Public Service Commission. If I can be of further service, please do not hesitate to contact me.

Sincerely,

Dale Wright  
Staff Attorney

DW:v

Gas Group  
Movants  
Exhibit 3

**EXHIBIT C**

W

Microsoft Access - [OpenForm: Form]

File Edit View Insert Format Records Tools Window Help

Tariff:01 Pnk:01 Check:01 Tariff:00 Pnk:00 Check:00 Tariff:00

File Number	81-0693	ID Number	0
Unit Name	The Gas Group, Inc.		
Summary of Filing	Rates, Rules & Regs. to provide farm tap service.		
Date Filed	05/08/2000	Current	<input type="checkbox"/>
Proposed Effective Date	01/01/1993	Comments:	
Order Number		To Eng. 6/9 - reject with note. To Shaw	
Staff Review - Date Forwarded	06/09/2000	6/16 - reject. To Legal 6/20 (Closed	
Staff Review - Date Returned		4/10/01 per JCN)	
Effective Date			
Date of Letter			
Suspension Date			
Rejection Date			

Record: 693 of 1944

Record: 1 of 1

Form View

**EXHIBIT D**

COMMONWEALTH OF KENTUCKY  
PUBLIC SERVICE COMMISSION  
CASE #: 2017-00120

IN RE:

BASIL C. POLLITT, INDIVIDUALLY  
D/B/A THE GAS GROUP, INC.  
A/K/A THE GAS GROUP.

AFFIDAVIT OF JASON SHARP

Comes the Affiant, Jason Sharp, and after having been duly sworn states as follows:

1. Affiant has personal knowledge of the matters set forth in this affidavit.
2. Affiant is a member/manager/owner of Southern Kentucky Energy, LLC (hereinafter "SKE"). It was in that capacity that Affiant testified voluntarily at the PSC hearing on 8-9-17. Since that time Affiant has further provided PSC with additional materials. Affiant herein seeks to make clear the business relationship between Basil Pollitt (The Gas Group) and SKE.
3. SKE produces natural gas from wells located in Kentucky. This is part of SKE's business plan as it seeks to produce, purchase, transport and otherwise bring to market natural gas from Kentucky natural gas wells for intrastate use. In short, SKE seeks to invest in Kentucky.
4. It is in this regard that SKE began a business relationship with Pollitt/Gas Group. SKE began negotiations with Pollitt/Gas Group as it sought to utilize its pipeline to transport natural gas to certain end users in the southern Kentucky (Morgantown) area (Real Alloy). SKE was further interested in purchasing natural gas from Pollitt/Gas Group in the event of a demand/supply imbalance. Moreover, SKE hopes to increase its sales significantly.
5. While the parties initially discussed purchasing the Pollitt/Gas Group line this was not economically feasible. Moreover, the gas line is burdened by Farm Tap customers. This is not a good fit for SKE. Accordingly, negotiations centered upon SKE using the Pollitt/Gas Group pipeline

