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COMMISSION

In the Matter of:

APPLICATION OF)
KENTUCKY FRONTIER GAS, LLC) CASE NO. 2017-00263
FOR ALTERNATIVE RATE ADJUSTMENT)
PURSUANT TO 807 KAR 5:076)

**ATTORNEY GENERAL'S RESPONSE TO FRONTIER'S MOTION FOR
WAIVER**

Comes now the intervenor, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention (hereinafter "Attorney General"), and submits this Response to Kentucky Frontier Gas, LLC (hereinafter "Frontier")'s Motion for Waiver, and hereby states as follows.

In its motion, Frontier cites KRS 278.2219 in full, which details the process for applying for a waiver or deviation from the requirements of KRS 278.2201 to 278.2213. In short, KRS 278.2219 requires a showing of the utility's need of a waiver or deviation and, if appropriate, documentation of the costs and benefits of compliance with KRS 278.2201 to 278.2213. If the Commission then finds that compliance with the statutes would be impracticable or unreasonable, it shall grant a waiver or deviation to the utility. Frontier does not satisfy the requirements of KRS 278.2219 in demonstrating the requisite need, and it does not provide any documentation as to the cost of complying with the affiliate transaction statutes. Furthermore, its inconsistent positions throughout the case make it difficult to accept that a waiver from the statute's requirements is warranted.

Frontier first notes that the Attorney General initially raised the issue of affiliate transactions in regards to the services that Frontier's affiliates billed to the utility. Frontier

eventually admits that these transactions “are not arms-length,” but claims that the below market price for the fees charged essentially renders them harmless despite the fact that KRS 278.2213(6) states “[a]ll dealings between a utility and a nonregulated affiliate shall be at arm’s length.” In its motion, Frontier still maintains that the record reflects that it has no non-Kentucky affiliates.¹

In reply to Staff’s recent question about its own use of the term “affiliated companies” in responding to Staff’s first request, Frontier states that “[i]n this context, ‘affiliated companies’ are the companies … affiliated with the members but not Frontier”²—despite the fact that this fits into the definitions of “under common control” and “affiliate” in 807 KAR 5:001 Section 1. When asked to explain why Frontier members began to bill as individuals instead of through their respective companies as of January 1, 2018, Frontier cites obvious confusion regarding the fees,³ and says “[i]n the Data Requests and the hearing, it was clear that the AG and PSC did not understand the 10-year practice of members billing Frontier for part-time consulting work through their respective consulting companies.”⁴ Frontier goes on to say that the change was made to eliminate confusion going forward.⁵

Furthermore, Frontier states that “[i]t takes three members’ votes to control Frontier. Shute has one, Rich has one, Oxford has one and IGS has one. Thus, none of the Frontier members controls Frontier and Frontier cannot control any of the non-Kentucky companies either directly or through any combination of its members.”⁶ Frontier further states “[t]he voting interests of Mr. Oxford and IGS are separate. The president of IGS (Dennis Horner) votes the interest of IGS, not

¹ Frontier Motion for Waiver at 2, 7 (August 9, 2018).

² Frontier’s Response to Staff’s Sixth Data Requests, Item 4 (August 9, 2018).

³ *Id.*, Item 5.

⁴ Frontier’s Response to Attorney General’s Supplemental Affiliate Data Requests, Item 1 (August 9, 2018).

⁵ *Id.*

⁶ Frontier Motion for Waiver at 3.

Mr. Oxford.”⁷ However, the minutes of two member meetings supplied by Frontier indicate that Mr. Oxford voted both on his own behalf and on behalf of IGS in one meeting, and likely did so in the other, where Mr. Rich and Mr. Horner were both absent.⁸

After explaining the fees charged by the affiliated companies in the case and downplaying their impact to the utility’s total operating expenses, Frontier then refers to “the cost that will be incurred in developing an allocation method” and declares that “[t]he record shows … that the cost and benefit of a detailed cost allocation manual for minimal periodic costs is unnecessary.”⁹ Frontier does not estimate the cost of developing an allocation method. It should also be noted that Frontier previously emphasized the integral nature of Mr. Shute’s expertise to the utility’s operation, indicating that he will continue to bill for significant services moving forward.¹⁰

Finally, when pressed with a direct question from Commission Staff on whether Frontier intends to comply with the provisions of KRS 278.2201 to 278.2213, or alternatively ask for a waiver or deviation if certain other businesses are deemed affiliates of Frontier, Frontier simply stated that it included a motion for deviation “to expedite this matter and minimize further review.”¹¹ The Attorney General suggested in his post-hearing brief filed December 18, 2017 that Frontier could have filed a request for relief from these requirements under KRS 278.2219, but it had not done so.¹² Instead of changing its billing practices on January 1, 2018 and continuing to

⁷ *Id.* See also Frontier’s Response to Attorney General’s Supplemental Affiliate Data Requests, Item 2 (“Mr. Oxford has 1 individual vote and cannot cast the vote of IGS”).

⁸ Frontier’s Response to Staff’s Request for Information – Part 2, Item 32, Attachment 1 (“This meeting, designated as the Annual Meeting, was held by telephone on November 23,,[sic] 2015, with members Steve Shute and Robert Oxford present, *representing himself and Industrial Gas Services, Inc.* Notice of the meeting was given to each member on November 2, 2015. Larry Rich was not present.”[emphasis added]. Multiple items were then “discussed and agreed to by a majority vote of the members.”); Attachment 2 (“This meeting was held by telephone on December 22, 2016, with members Steve Shute and Robert Oxford present. Notice of the meeting was given to each member on November 7 and 17, 2016.” Multiple items were then “discussed and agreed to by a majority vote of the members.”).

⁹ Frontier Motion for Waiver at 7.

¹⁰ Frontier’s Response to Attorney General’s Initial Data Requests, Item 16.f (September 8, 2017). (“As Mr. Shute says, ‘I don’t know anybody that does what I do.’”).

¹¹ Frontier’s Response to Staff’s Sixth Data Requests, Item 6.

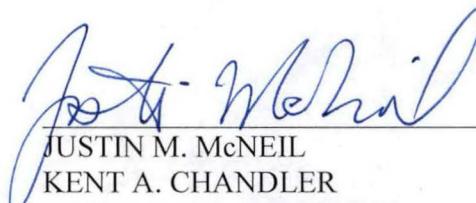
¹² Attorney General’s Post-Hearing Brief at 4 (December 18, 2017).

claim that the utility had no affiliates, Frontier could then have simply filed a motion for deviation. For Frontier to file the motion now, after the completion of the second procedural schedule in this matter and claim judicial efficiency as a basis for such, seems disingenuous.

Nevertheless, the Attorney General is not opposed to the Commission giving due consideration to requests for waiver or deviation from the requirements of these statutes, and granting those that it finds satisfy the requirements of KRS 278.2219. However, upon the instant facts, Frontier has not sufficiently demonstrated that its compliance is impracticable or unreasonable.

Respectfully submitted,

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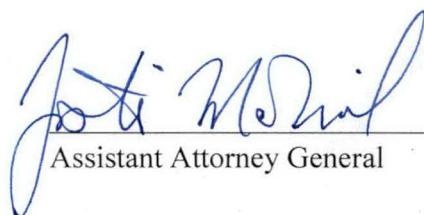
Certificate of Service and Filing

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

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This 16th day of August, 2018



John N. Hughes
Assistant Attorney General