

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In The Matter Of:

ELECTRONIC APPLICATION OF KENTUCKY FRONTIER
GAS, LLC FOR A DECLARATORY ORDER ON FREE GAS

CASE NO.
2025-00042

INTERVENORS' RESPONSE TO KENTUCKY FRONTIER GAS, LLC'S
MEMORANDUM BRIEF AND REQUEST TO SUBMIT ON THE RECORD

RECEIVED

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COMMISSION**

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Comes the Intervenors, by counsel, and for their Response in Opposition to Kentucky Frontier Gas, LLC's Memorandum Brief and Request to Submit on the Record, state as follows:

INTRODUCTION

Kentucky Frontier Gas, LLC ("Frontier") asks the Commission to enter a sweeping declaratory ruling that all alleged rights to free gas are null and void and to decide this matter solely on the existing record. That request rests on an overbroad legal theory that improperly reduces a series of individualized, fact-specific claims into a single regulatory question. As Frontier's own memorandum demonstrates, the claims at issue arise from differing factual circumstances, including easements, alleged agreements, and longstanding course of performance between the utility or its predecessors and individual landowners. (Frontier Mem. Br. at 3).

The Intervenors do not challenge Frontier's tariff or seek preferential rates. Instead, they assert that free gas was provided as consideration in exchange for property rights or agreements unique to their properties. Kentucky law makes clear that such claims cannot be resolved through blanket application of tariff principles alone. Because the issues presented are fact-intensive and legally nuanced, Frontier's request for

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ARGUMENT

I. Frontier Improperly Seeks a Blanket Declaratory Ruling Based on Generalized Legal Principles

Frontier's central argument is that any provision of free gas necessarily violates KRS 278.160 because it is not reflected in Frontier's filed tariff. This position is overly broad and fails to account for the individualized nature of the claims at issue. As reflected throughout Frontier's own factual recitation, the alleged rights to free gas arise from a variety of circumstances, including easements, alleged exchanges of consideration, and long-term provision of gas without charge. (Frontier Mem. Br. at 3-4).

Kentucky law does not permit such fact-specific disputes to be resolved through categorical rules. Rather, where claims depend on the particular agreements and conduct between parties, a blanket declaration is inappropriate. The Commission cannot resolve

all claims uniformly without first examining the underlying facts specific to each Intervenor.

II. The Intervenors' Claims Involve Private, Fact-Specific Rights, Not Pure Rate Regulation

Frontier attempts to frame this dispute as one involving utility rates and services within the Commission's exclusive authority. Kentucky law, however, draws a critical distinction between general regulatory matters and disputes arising from private agreements.

The Kentucky Court of Appeals has made clear that "where a matter complained of is one of purely private concern between the utility and one of its patrons, courts have jurisdiction to hear and determine the controversy." *Bee's Old Reliable Shows, Inc. v. Ky. Power Co.*, 334 S.W.2d 765, 766 (Ky. 1960). The court further explained that where a dispute arises from a contract "of private concern to these parties," jurisdiction is not exclusively regulatory in nature. *Id.* at 767.

Similarly, in *Bulldog's Enterprises, Inc. v. Duke Energy*, the court emphasized that while questions of rates and services fall within the Commission's jurisdiction, "claims unique to a particular individual" fall outside that scope and are not properly resolved as generalized regulatory issues. 412 S.W.3d 210, 212 (Ky. App. 2013). And critically, Kentucky courts have held that the Commission does not have authority to adjudicate contract damages claims, noting that "[n]owhere in Chapter 278 do we find a delegation of power to the PSC to adjudicate contract claims for unliquidated damages." *Carr v. Cincinnati Bell, Inc.*, 651 S.W.2d 126, 129 (Ky. App. 1983). These authorities collectively demonstrate that Frontier's attempt to resolve individualized, fact-dependent claims

through a blanket legal declaration is improper.

While this matter is before the Commission, these authorities underscore that not every dispute involving a utility is purely regulatory. The Intervenors' claims turn on agreements, consideration, and conduct specific to individual properties, placing them outside the type of uniform rate-setting issues Frontier attempts to characterize.

III. Frontier Misapplies KRS 278.160

Frontier argues that any agreement for free gas is void because it is not included in its tariff. This argument ignores the nature of the Intervenors' claims. (Frontier Mem. Br. at 4-5). The Intervenors do not seek preferential treatment under Frontier's tariff; rather, they assert that free gas was provided as part of a bargained-for exchange tied to property rights.

Kentucky law expressly allows the true consideration underlying an agreement to be established through evidence. KRS § 371.030 provides that the consideration of any writing may be "impeached or denied by pleading." Consistent with that principle, Kentucky courts have recognized that the actual consideration supporting a contract may be shown through extrinsic evidence, even where it differs from the written document. *Jones v. Riddell*, 224 Ky. 245, 248, 5 S.W.2d 1077, 1079 (1928).

Accordingly, the absence of an explicit reference to free gas within a written easement or recorded document does not resolve the issue. The question is whether free gas constituted consideration for the agreement, which is a factual inquiry that cannot be answered solely by reference to Frontier's tariff.

IV. Frontier Misapplies the Parol Evidence Rule

Frontier's reliance on the parol evidence rule is similarly misplaced. Kentucky law

does not prohibit the introduction of extrinsic evidence where a contract is ambiguous or incomplete. Rather, courts may consider such evidence to determine the intent of the parties.

As the Kentucky Court of Appeals has explained, “where a contract is ambiguous... a court may consider parol and extrinsic evidence... including the conduct of the parties.” *Cantrell Supply, Inc. v. Liberty Mut. Ins. Co.*, 94 S.W.3d 381, 385 (Ky. App. 2002). Likewise, where a written agreement is uncertain, “any ambiguity therein may be explained by... parol testimony.” *Jones v. Riddell*, 224 Ky. at 248, 5 S.W.2d at 1079.

Here, Frontier’s own filing acknowledges that certain consumers have received free gas for extended periods, in some cases dating back to the inception of the pipeline. (Frontier Mem. Br. at 3) This course of performance is directly relevant to determining the existence and nature of any agreement and cannot be disregarded under a blanket application of the parol evidence rule.

V. Frontier’s Statute of Frauds Argument Does Not Resolve These Claims

Frontier further contends that any unwritten agreement is barred by the Statute of Frauds. This argument mischaracterizes the Intervenor’s claims. The issue is not the creation of new property rights through unwritten agreements, but rather the determination of the consideration supporting existing agreements and property arrangements. Kentucky law permits the consideration underlying a written agreement to be proven through evidence, including the conduct of the parties. KRS § 371.030. The Intervenor’s rely on such evidence to demonstrate that free gas was part of the consideration exchanged, not to create an entirely new interest in land.

Because Frontier’s argument depends on an incorrect framing of the issue, it does not eliminate the need for factual development.

VI. Course of Performance and Equity Require Further Fact Development

Frontier's own factual recitation confirms that certain consumers have received free gas for years, in some instances without interruption. This longstanding course of performance is highly probative under Kentucky law and must be considered in evaluating the claims at issue. *Cantrell Supply*, 94 S.W.3d at 385. Moreover, Frontier's position raises serious equitable concerns. Frontier seeks to retain the benefits of easements and property access while disavowing any obligation associated with those rights. Kentucky law does not favor such outcomes. To establish unjust enrichment, a party must show that a benefit was conferred, that the recipient appreciated the benefit, and that retention of the benefit without payment would be inequitable. *Jones v. Sparks*, 297 S.W.3d 73, 78 (Ky. App. 2009).

If landowners provided property rights in exchange for free gas, Frontier cannot retain those benefits while avoiding the corresponding obligations without a full examination of the facts.

VII. This Matter Should Not Be Submitted on the Record

Finally, Frontier requests that this matter be decided on the existing record. That request should be denied. The issues presented involve disputed facts, differing agreements, and varying course-of-performance evidence among the Intervenor. These are not purely legal questions capable of resolution without further evidentiary development. Submission on the record at this stage would improperly foreclose the Intervenor's ability to present evidence necessary to support their claims and would risk resolving complex factual issues without a sufficient foundation.

CONCLUSION

For the foregoing reasons, Kentucky Frontier Gas, LLC's request for a declaratory ruling and for submission of this matter on the record should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2026, the foregoing document was electronically filed with the Kentucky Public Service Commission using the KY eCourts eFiling system.

A true and accurate copy of the foregoing document was served via email upon:

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TABLE OF AUTHORITIES

Cases

Bee's Old Reliable Shows, Inc. v. Kentucky Power Co., 334 S.W.2d 765 (Ky. 1960)

- Establishes that disputes that are “purely private” between a utility and a customer are not exclusively within PSC jurisdiction and cannot be resolved through blanket regulatory determinations.

Bulldog's Enterprises, Inc. v. Duke Energy, 412 S.W.3d 210 (Ky. App. 2013)

- Distinguishes between general rate/service regulation (PSC) and individualized claims unique to specific customers, supporting the argument that this case is fact specific.

Carr v. Cincinnati Bell, Inc., 651 S.W.2d 126 (Ky. App. 1983)

- Confirms that the PSC does not have authority to adjudicate contract-based claims for damages, reinforcing that not all utility-related disputes are purely regulatory.

Jones v. Riddell, 224 Ky. 245, 5 S.W.2d 1077 (1928)

- Allows use of parol evidence to explain or supplement contractual terms, especially regarding consideration, supporting the argument that free gas may be proven as part of the agreement.

Cantrell Supply, Inc. v. Liberty Mutual Insurance Co., 94 S.W.3d 381 (Ky. App. 2002)

- Holds that extrinsic evidence, including course of performance, may be used to interpret ambiguous or incomplete agreements, supporting reliance on longstanding free gas practices.

Jones v. Sparks, 297 S.W.3d 73 (Ky. App. 2009)

- Sets out the elements of unjust enrichment, supporting the argument that Frontier cannot retain benefits (easements/property access) without honoring the underlying consideration.

Statutes

KRS § 278.160

- Governs utility rate uniformity; used by Frontier, but distinguished by Intervenor as not dispositive of private contractual/property-based arrangements.

KRS § 371.030

- Allows the true consideration of a written agreement to be shown by evidence, supporting the argument that free gas may constitute consideration even if not explicitly written.