

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF)	
JURISDICTIONAL STATUS OF EAST KENTUCKY)	CASE NO.
MIDSTREAM, LLC AND OF ITS COMPLIANCE)	2022-00238
WITH KRS CHAPTER 278, 807 KAR CHAPTER)	
005, AND 49 CFR PARTS 191 AND 192)	

ORDER

On July 22, 2022, Kentucky Frontier Gas, LLC (Kentucky Frontier) filed a verified application for a Declaratory Order (Application) regarding the Commission’s jurisdiction over one of Kentucky Frontier’s suppliers, East Kentucky Midstream, LLC (East Kentucky Midstream).¹ In its Application, Kentucky Frontier alleged that East Kentucky Midstream had threatened to terminate service under a natural gas sales and transportation agreement if an alleged unpaid balance was not paid.² On August 11, 2022, the Commission, on its own motion, initiated this proceeding to conduct formal investigation into the jurisdictional status and compliance of East Kentucky Midstream under KRS Chapter 278, 807 KAR Chapter 005 and 49 C.F.R. Parts 191 and 192.³ Because the Commission’s investigation in this case raised overlapping issues with Kentucky

¹ Case No. 2022-00224, *Electronic Application for a Declaratory Order Regarding Commission Jurisdiction* (filed July 22, 2022).

² Case No. 2022-00224, Application at 13, 20-24.

³ Pursuant to KRS 278.495(2) the Commission only regulates the safety of facilities meeting the definition of “transmission line” under 49 C.F.R. Parts 191 and 192. When the Commission opened this investigation, two segments on the then Jefferson Gas system met that definition. Order (Ky. PSC Aug. 11, 2022) at 5.

Frontier's Application, the Commission closed Case No. 2022-00224 and incorporated the record into this proceeding.⁴

BACKGROUND

Kentucky Frontier is a natural gas distribution utility that serves approximately 5,200 customers in 13 counties in Eastern Kentucky.⁵ Kentucky Frontier serves approximately 1,600 customers in the communities of Jackson, Campton, Pine Ridge, Cliffview, Hazel Green and other rural areas located in the former Public Gas system.⁶ In Kentucky Frontier's July 22, 2022 Application it stated that, since 2008, it had acquired gas distribution systems from twelve small operators in Eastern Kentucky and consolidated those systems into a single gas utility. The largest of those acquired systems was Public Gas Company (Public Gas).⁷

According to Kentucky Frontier, Jefferson Gas Transmission Company⁸ had been Public Gas's sole gas supplier for years.⁹ After Kentucky Frontier's acquisition of Public Gas, Jefferson Gas remained the sole supplier of gas for that section of Kentucky

⁴ Case No. 2022-00224, (Ky PSC Aug. 18, 2025), Order.

⁵ *Annual Report of Kentucky Frontier to the Public Service Commission for the Calendar Year Ended December 31, 2020* at 5.

⁶ Jefferson Gas Transmission Company, Inc., merged with Jefferson Gas, LLC, in 2002, with Jefferson Gas, LLC, being the surviving entity. "Jefferson Gas" in this Order refers to Jefferson Gas, LLC, and its predecessor entity.

⁷ Case No. 2022-00224, Application at 2. Kentucky Frontier acquired Public Gas in 2015 following Commission approval of the companies' joint application. Case No. 2015-00299, *Joint Application of Kentucky Frontier Gas, LLC and Public Gas Company for Approval of Transfer and Acquisition of Assets and Financing* (Ky. PSC Nov. 24, 2015) Final Order at 5.

⁸ Case No. 2022-00224, Application at 2.

⁹ Case No. 2022-00224, Application at 2. As Kentucky Frontier's Application detailed, the former Public Gas customers were all located in close proximity to the Jefferson Gas transmission system. In fact, Jefferson Gas and Public Gas had at one point been commonly owned.

Frontier's distribution system.¹⁰ According to Kentucky Frontier, during the acquisition's transition period, then Jefferson Gas demanded increases in its margin from \$1.50 to \$2.00 per DTh. At that same time, Kentucky Frontier alleged that Jefferson Gas was no longer relying solely on locally produced gas but instead supplementing its supply for the majority of the year from Columbia Gulf Transmission (Columbia).¹¹ Apparently, Jefferson Gas again raised its margin from \$2.00 to \$3.25 per DTh in 2018 and, allegedly, did so without notice to Kentucky Frontier.¹²

According to Kentucky Frontier's Application, in 2020, Jefferson Gas informed Kentucky Frontier that the Jefferson Gas system was for sale.¹³ In addition to the notice of its intent to sell, Kentucky Frontier stated that Jefferson Gas indicated the company was in "dire financial condition" and needed to raise the transportation rate again, this time to \$5.75 per DTh.¹⁴ According to the Application, Kentucky Frontier considered purchasing Jefferson Gas during the winter months of 2020-2021.¹⁵ As part of its communications with Jefferson Gas, Kentucky Frontier stated that it was provided a marketing brochure which described the Jefferson Gas system as a "235-mile, low-pressure natural gas transmission line."¹⁶ However, in contrast to the Jefferson Gas

¹⁰ Case No. 2022-00224, Application at 3.

¹¹ Case No. 2022-00224, Application at 4-5.

¹² Case No. 2022-00224, Application at 5.

¹³ Case No. 2022-00224, Application at 2.

¹⁴ Case No. 2022-00224, Application at 5.

¹⁵ Case No. 2022-00224, Application at 5.

¹⁶ Case No. 2022-00224, Application at 5.

system marketing brochure, Kentucky Frontier's Application stated that Jefferson Gas designated the majority of its pipelines as gathering pipelines.¹⁷

Kentucky Frontier stated that in March 2021, Jefferson Gas notified Kentucky Frontier it had sold its pipeline system to East Kentucky Midstream, effective March 1, 2021.¹⁸ Kentucky Frontier also stated that it entered in a new gas supply contract with East Kentucky Midstream after its contract with Jefferson Gas expired on April 30, 2021.¹⁹ According to Kentucky Frontier, that agreement included "the same transportation fee with additional costs."²⁰

According to Kentucky Frontier, the geographical proximity between East Kentucky Midstream and its customers formerly served under the Public Gas banner made East Kentucky Midstream the only source of gas for those customers.²¹ Kentucky Frontier stated that, on July 18, 2022, it received two invoices from East Kentucky Midstream in the total amount of \$283,668.85, with a cover letter stating that East Kentucky Midstream would terminate its gas supply contract with Kentucky Frontier if the amount billed was not paid within 30 days.²²

Based on its representations in its application, Kentucky Frontier alleged that East Kentucky Midstream is subject to the Commission's jurisdiction as either a distribution or

¹⁷ Case No. 2022-00224, Application at 5.

¹⁸ Case No. 2022-00224, Application at 3.

¹⁹ Case No. 2022-00224, Application at 3.

²⁰ Case No. 2022-00224, Application at 3.

²¹ Case No. 2022-00224, Application at 13.

²² Case No. 2022-00224, Application at 13, Exhibit C.

transportation gas utility.²³ Kentucky Frontier further argued that East Kentucky Midstream should be subject to the Commission's jurisdiction over the rates and services of utilities as defined in KRS 278.020, as well as the Commission's jurisdiction to enforce federal pipeline safety standards for operators of jurisdictional natural gas pipeline facilities.²⁴ Kentucky Frontier contended that it does not have an alternative source of gas supply for its customers on the Public Gas system, and the unregulated rates East Kentucky Midstream charges for supplying gas are not fair, just or reasonable.²⁵ Kentucky Frontier requested that the Commission assert jurisdiction over the rates charged by East Kentucky Midstream to Kentucky Frontier as would be appropriate for a regulated utility.²⁶

PROCEDURAL HISTORY

As stated above, the Commission issued its opening Order in this investigation on August 11, 2022. On August 12, 2022, the Commission amended its August 11, 2022, Order to expand the investigation to determine whether East Kentucky Midstream is a common carrier under KRS 278.470, subject to KRS 278.505 as an intrastate pipeline transporting natural gas in intrastate commerce and granted intervention to Kentucky Frontier.²⁷ The Commission also granted intervention to the Attorney General by Order dated August 22, 2022.²⁸ The Commission issued a procedural schedule by Order dated

²³ Case No. 2022-00224, Application at 6.

²⁴ Case No. 2022-00224, Application at 14.

²⁵ Case No. 2022-00224, Application at 3.

²⁶ Case No. 2022-00224, Application at 15.

²⁷ Order (Ky. PSC Aug. 12, 2022) at 2-3.

²⁸ Order (Ky. PSC Aug. 12, 2022) at 2-3.

September 7, 2022.²⁹ East Kentucky Midstream filed responses to five requests for information from Commission Staff, two requests for information from Kentucky Frontier, and one request for information from the Attorney General.³⁰ Kentucky Frontier filed responses to two requests for information from Commission Staff as well as a subpoena duces tecum.³¹

A formal conference was held on this matter on October 14, 2022. Direct Testimony was filed by Kentucky Frontier on October 26, 2022, and by East Kentucky Midstream on November 28, 2022.

Maps of the East Kentucky Midstream system³² were provided by East Kentucky Midstream. Jack Banks stated at the formal conference that there were some additional lines owned by East Kentucky Midstream that were not shown on the maps provided.³³ On December 20, 2022, the Commission issued an Order establishing a briefing schedule. All parties filed timely briefs. On February 23, 2023, an informal conference

²⁹ Order (Ky. PSC Sept.7, 2022).

³⁰ East Kentucky Midstream's Response to Commission Staff's First Requests for Information (filed Sept. 26, 2022) (Staff's First Request); East Kentucky Midstream's Response to Attorney General's First Requests for Information (filed Sept. 26, 2022) (Attorney General's First Request); East Kentucky Midstream's Response to Kentucky Frontier's First Requests for Information (filed Sept. 26, 2022) (Kentucky Frontier's First Response); East Kentucky Midstream's Response to Commission's Second Request for Information (filed Oct. 19, 2022) (Staff's Second Request); East Kentucky Midstream's Response to Commission's Post-Formal Conference Request for Information (filed Nov. 16, 2022) (Staff's Post Formal Conference Requests); East Kentucky Midstream's Response to Commission Staff's Post-Deposition Request for Information (filed Aug. 10, 2023) (Staff's Post-Deposition Requests); East Kentucky Midstream's Response to Kentucky Frontier's Post-Hearing Request for Information (filed June 10, 2025) (Kentucky Frontier's Post-Hearing Requests); East Kentucky Midstream's Response to Commission Staff's Post-Hearing Request for Information (filed June 10, 2025) (Staff's Post-Hearing Requests);

³¹ Kentucky Frontier's Response to Commission Staff's Post Formal Conference Requests; Kentucky Frontier's Response to Commission's Subpoena Duces Tecum (filed May 31, 2023); Kentucky Frontier's Response to Commission Staff's Post-Hearing Request for Information (filed May 2, 2025).

³² East Kentucky Midstream's Responses to Staff's First Request, Item 1.

³³ Formal Conference Video Recording (FCVR) of the October 14, 2022 conference at 10:44:09–10:44:15.

was held between the parties. On June 7, 2023, the Commission subpoenaed Kentucky Frontier employees, John White and Mike Harris, and East Kentucky Midstream employees, Jack Banks and Darrell Banks, to be deposed on June 22, 2023. Deposition transcripts were filed on July 28, 2023. Following the depositions, the Commission retained the consulting services of Sander Resources to do a field investigation of East Kentucky Midstream, map the system, and provide a jurisdictional analysis of the system.³⁴ Sanders Resources responded to one request for information from East Kentucky Midstream.³⁵ No party raised an objection as to the qualifications or use of this consultant.

The final Report of the Regulatory Status of East Kentucky Midstream by Sanders was filed on July 16, 2024. Comments to the report were filed by East Kentucky Midstream and Kentucky Frontier on July 22, 2024. Rebuttal Testimony was filed by Kentucky Frontier on August 30, 2024. An Informal Conference was held to discuss the necessity of a hearing date with memo filed February 24, 2025.³⁶ The final hearing on this matter was held on May 19, 2025. Post-hearing briefs were filed by East Kentucky Midstream and Kentucky Frontier on June 13, 2025. Reply Briefs were filed by East Kentucky Midstream and Kentucky Frontier on June 27, 2025. The matter now stands submitted for a decision.

³⁴ Order (Ky. PSC Mar. 25, 2024).

³⁵ Sander's Response to East Kentucky Midstream's Request for Information (filed Sept. 17, 2024).

³⁶ Memorandum of February 21, 2025 Informal Conference (Ky. PSC Feb 24, 2025).

LEGAL STANDARD

Pursuant to KRS 278.040, the Commission has jurisdiction over the rates and services of all utilities in Kentucky, including natural gas local distribution and transmission companies. All utilities in Kentucky must “furnish adequate, efficient and reasonable service, and may establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service.” KRS 278.010(14) defines “adequate service” in relevant part as maintaining sufficient facilities to assure customers of a “reasonable continuity of service.”³⁷ KRS 278.010(3) defines “utility” to include

[A]ny person. [. . .] who owns, controls, operates or manages any facility used or to be used for in connection with:

(b) The production, manufacture, transportation, storage, distribution, conveying or sale of natural gas to or for the public for compensation.

KRS 278.504, states in relevant part

“[L]ocal distribution company” means any utility or any other person, other than an interstate pipeline or an intrastate pipeline, engaged in transportation or local distribution of natural gas and the sale of natural gas for ultimate consumption, but shall not include any part of any pipeline primarily used for storage or gathering or low-pressure distribution of natural gas

KRS 278.250 and 278.260 govern, generally, the Commission’s investigatory authority. KRS 278.250 empowers the Commission to “investigate and examine the condition of any utility subject to its jurisdiction.” For its part, KRS 278.260(1) gives the

³⁷ In its entirety, KRS 278.010(14) defines "Adequate service" as “having sufficient capacity to meet the maximum estimated requirements of the customer to be served during the year following the commencement of permanent service and to meet the maximum estimated requirements of other actual customers to be supplied from the same lines or facilities during such year and to assure such customers of reasonable continuity of service.”

Commission “original jurisdiction over complaints as to rates or service of any utility [. . .] that any rate [. . .] is unreasonable or unjustly discriminatory [. . .] or relating to the service of the utility or any service in connection therewith is unreasonable, unsafe, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained[.]” Additionally, KRS 278.260(1) also empowers the Commission to establish an investigation “on its own motion[.]” while mandating that “[n]o order affecting the rates or service complained of shall be entered by the [C]ommission without a formal public hearing.”

If the Commission finds that any practice of a utility is unjust, unreasonable, unsafe, improper, inadequate, or insufficient, the Commission will prescribe a practice for the utility that enables the utility to maintain “adequate, efficient and reasonable service.”³⁸ Additionally, utilities found by the Commission to be in violation of any provision of KRS Chapter 278 are subject to the penalties set forth in KRS 278.990. Any person found to have violated federal pipeline safety laws contained in 49 U.S.C. Section 60101 et seq is subject to the penalties set forth in 49 C.F.R. Section 190.223.³⁹

Finally, with respect to farm tap gas service, pursuant to KRS 278.485, the Commission has limited jurisdiction over connections requested by property owners who must be served upon request if they are located within one-half (1/2) air-mile of a gas pipeline company’s producing gas wells or gas gathering pipeline,⁴⁰ or as part of a

³⁸ KRS 278.030(2).

³⁹ KRS 278.992.

⁴⁰ Case No. 2018-00263, *Georgia Johnson v. Peoples Gas KY, LLC* (Ky. PSC Mar. 27, 2020), Order at 5.

statutorily required and agreed-upon oil-and-gas lease and right of way agreement.⁴¹ KRS 278.485(5) specifies that the provisions of this section shall apply only to producing gas wells and to gas pipelines commonly known as gathering lines. The term “gathering lines” is defined in 807 KAR 5:026 in the same manner utilized by the U.S. Department of Transportation in 49.C.F.R. Parts 191, 192, 194, and 195 to identify those lines that “transport gas from [a] current production facility to a transmission line or main.”

KRS 278.485 also limits the Commission’s jurisdiction over gas pipeline companies offering only farm tap gas service, in that the Commission cannot restrict the right of any gas pipeline company to abandon any gas well or gathering pipeline, that the gas pipeline company is not responsible for the construction or maintenance of the service lines or regulators, and the gas pipeline company is not responsible for maintaining any specified gas pressure to farm tap gas recipients.⁴² However, the Commission does maintain jurisdiction concerning the rates to be charged for farm tap service,⁴³ and the Commission inspects the installation of the meter and gas regulator used in establishing a farm tap service.⁴⁴ Service lines must be installed in accordance with the safety standards prescribed by the Commission.⁴⁵

FINDINGS

This investigation was deemed prudent by the Commission to determine whether East Kentucky Midstream is subject to the Commission’s jurisdiction under KRS 278.040,

⁴¹ KRS 278.485(8).

⁴² KRS 278.485(2), (4), and (6).

⁴³ 807 KAR 5:026, Section 9.

⁴⁴ KRS 278.485(1) and (3).

⁴⁵ 807 KAR 5:026, Sections 2 through 6.

KRS 278.470, KRS 278.495, or KRS 278.505 based on the evolution of the former Jefferson Gas system to its current configuration as East Kentucky Midstream.

1. Common Carrier Status:

The classification of Common Carrier in this case is undisputed. KRS 278.470 states:

[C]ompanies transporting oil or gas by pipeline are common carriers. Every company receiving, transporting or delivering a supply of oil or natural gas for public consumption is declared to be a common carrier, and the receipt, transportation and delivery of natural gas into, through and from a pipeline operated by any such company is declared to be a public use.

East Kentucky Midstream has agreed that it is a Common Carrier under KRS 278.470 and KRS 278.490.⁴⁶ Kentucky Frontier also stated it believed East Kentucky Midstream to be a Common Carrier under KRS 278.470.⁴⁷ Based on the evidence in the evidence of record, the Commission finds that East Kentucky Midstream is a Common Carrier under KRS 278.470.

2. Intrastate Transportation Status

The classification of intrastate pipeline in this case is undisputed. KRS 278.504(1) states,

“Intrastate pipeline” means any utility, or any other person engaged in natural gas transportation in intrastate commerce, for compensation, to or for another person or to or for the public but shall not include any part of any pipeline dedicated to storage or gathering or low-pressure distribution of natural gas.

⁴⁶ East Kentucky Midstream Brief #1 (filed Jan. 20, 2023) at 2.

⁴⁷ Kentucky Frontier Brief #1 (filed Jan. 20, 2023) at 10.

East Kentucky Midstream stated it is not an intrastate pipeline as defined in KRS 278.504(1).⁴⁸ Further, at the formal conference, East Kentucky Midstream stated it is not transporting gas that belongs to any other entity other than East Kentucky Midstream at any time.⁴⁹ Kentucky Frontier agreed with the above statement by East Kentucky Midstream.⁵⁰ Kentucky Frontier went on to state, in its brief, that Kentucky Frontier and the city of West Liberty (including the state prison) only purchase East Kentucky Midstream owned gas.⁵¹ Based on the evidence of record, the Commission finds that East Kentucky Midstream is not an intrastate pipeline pursuant to KRS 278.504(1).

3. Utility Status

Based on the record and a review of the character of the service provided East Kentucky Midstream, and being otherwise sufficiently advised, the Commission finds that, given its service role outside the scope of KRS 278.485, East Kentucky Midstream should be deemed a jurisdictional utility. In determining the jurisdictional status of the system, the Commission must determine whether all or any portion of the gas pipeline company is a “utility” pursuant to KRS 278.010(3) or is operating within the parameters of KRS 278.485.

⁴⁸ East Kentucky Midstream Brief #1 at 2.

⁴⁹ FCVR of October 14, 2022 conference at 10:57:40–10:58:33.

⁵⁰ Kentucky Frontier Brief #1 at 8.

⁵¹ Kentucky Frontier Brief #1 at 9.

Recently, the Commission issued a final Order in Case No. 2023-00207, an investigation into the jurisdictional status of Lindsey Enterprises.⁵² In that case, the Commission determined that Lindsey Enterprises would not be classified as a utility due to its limited-service role and concurrence with KRS 278.485. The Commission looked at the origin of the system; current function; the construction and maintenance responsibility for the service lines; and continuity of service provisions as applicable to KRS 278.485(4). The Commission determined that Lindsey Enterprises offered natural gas service, initially based on the mandate set forth in KRS 278.485(8), for surface owners with line crossing their property, did not construct or maintain service lines, did not provide a continuity of service, and that the production at the well determined whether or not gas would be available to the customer.⁵³

The Commission has undertaken a similar analysis in this case while also utilizing the final report provided by Sander Resources (Sander's Report). The Sander Report outlined a system inclusive of 26 separate sub-systems that Sander organized into five geographic regions, comprised of 381 miles of gathering, transmission and distribution pipelines.⁵⁴ The Sander Report noted that East Kentucky Midstream's pipeline system was designed and constructed to allow for bi-directional flow.⁵⁵ As a result of the bi-

⁵² Case No. 2023-00107, *Electronic Investigation of Jurisdictional Status of Lindsey Enterprises, LLC and of Its Compliance with KRS Chapter 278, 807 KAR Chapter 005, And 49 CFR Parts 191 and 192* (Ky. PSC July 25, 2023), final Order.

⁵³ Case No. 2023-00107, July 25, 2023 final Order at 3–4.

⁵⁴ Sander Resources Regulatory Status of East Kentucky Midstream Pipeline System (filed July 16, 2024) (Sander Report) at 3

⁵⁵ Sander Report at 3.

directional flow, certain segments of the system are capable of operating as gathering⁵⁶ or distribution,⁵⁷ and under certain operating conditions could also function as transmission facilities, if the operator elects to designate the segments as such.⁵⁸ The Sander Report looked at two primary questions when making determinations about this system, specifically, what type of pipeline is the gas being received from and what type of pipeline, or to what endpoint, is the gas is being delivered.⁵⁹ The bi-directional segments were considered from both directional perspectives, upstream and downstream.⁶⁰ Ultimately, the Sander Report determined that East Kentucky Midstream would need to file a Distribution Annual Report for the several of the systems when the gas is being moved south from the Hazel Green Compressor Station, unless East Kentucky Midstream elected to treat eligible systems as transmission.⁶¹ The systems determined to be distribution in this operating instance include KZ East and KW West, Means, and potentially C-Line, Trent/A-1, Cannal City, A-3, A-4, J-Line, Jackson East Loop, Jackson West Loop.⁶²

⁵⁶ 49 C.F.R 192.3 *Gathering line* means a pipeline that transports gas from a current production facility to a transmission line or main.

⁵⁷ 49 C.F.R 192.3 *Distribution line* means a pipeline other than a gathering or transmission line.

⁵⁸ Sander Report at 3.

⁵⁹ Sander Report at 6.

⁶⁰ Sander Report at 6.

⁶¹ Sander Report at 9.

⁶² Sander Report at 9. The maps of these systems deemed to be jurisdictional were included in the Sander Report but also were redacted pursuant to KRS 61.878(1)(m).

The System's Origin and Current Primary Function

The Commission's first consideration in determining whether East Kentucky Midstream is a utility is to determine the origin of the system as compared to the current primary function of the system. East Kentucky Midstream asserts that it is a low-pressure, intrastate, Type B gathering system.⁶³ East Kentucky Midstream has stated that it is exempt from jurisdiction under KRS 278.504(3) based on its gathering status.⁶⁴

In support of its position that it is a gathering system, East Kentucky Midstream references the Federal Energy Regulatory Commission (FERC) primary function test, which was applied in a FERC order involving East Kentucky Midstream's predecessor, Jefferson Gas. In that order, and because a definition of gathering was not provided by the National Gas Association, FERC developed a test known as the "primary function test".⁶⁵

The test includes consideration of physical and geographic factors including: (1) the length and diameter of the pipeline; (2) the location of compressors and processing plants; (3) the extension of the facility beyond the central point in the field; (4) the facility's geographic configuration; (5) the location of wells along all or part of the facility; and (6) the operating pressure of the pipeline."⁶⁶

⁶³ KRS 278.504(3) "Local distribution company" means any utility or any other person, other than an interstate pipeline or an intrastate pipeline, engaged in transportation or local distribution of natural gas and the sale of natural gas for ultimate consumption, but shall not include any part of any pipeline primarily used for storage or gathering or low-pressure distribution of natural gas.

⁶⁴ East Kentucky Midstream Brief #1 at 2.

⁶⁵ *Columbia Gas Transmission, LLC and Jefferson Gas, LLC*, 129 FERC P 61029, 2009 WL 3320526 (Oct. 15, 2009).

⁶⁶ *Columbia Gas Transmission, LLC and Jefferson Gas, LLC*, 129 FERC P 61029, 2009 WL 3320526 (Oct. 15, 2009).

FERC noted it also considers “the purpose, location and operation of the facility [and] the general business activity of the owner of the facility.”⁶⁷ FERC found, “[t]he facilities are located within a production field in Kentucky and that Jefferson [Gas was] a non-jurisdictional gatherer of natural gas that [was] engaged in gathering local production from its wells, as well as those owned by 38 third-party producers, and delivering it to its sister company for retail sales or to Columbia for delivery to interstate markets.”⁶⁸ East Kentucky Midstream alleged that the function and configuration of the original assets have not changed under East Kentucky Midstream’s ownership.⁶⁹

The Commission must also look at the system’s current function compared to the system’s original function. In Case No. 2017-00120,⁷⁰ determined that the classification of a gas pipeline is determined by its primary function and can change if the use of the pipeline changes.⁷¹ The Commission finding in Case No. 2017-00120⁷² based on the change in the character and function of the line from a gathering line to a distribution line, that Gas Group was no longer operating within the parameters of KRS 278.485 because the pipeline serving customers was not functioning as a gas

⁶⁷ *Columbia Gas Transmission, LLC and Jefferson Gas, LLC*, 129 FERC P 61029, 2009 WL 3320526 (Oct. 15, 2009) at *61152.

⁶⁸ *Columbia Gas Transmission, LLC and Jefferson Gas, LLC*, 129 FERC P 61029, 2009 WL 3320526 (Oct. 15, 2009) at *61152.

⁶⁹ East Kentucky Midstream’s Brief #1 at 1.

⁷⁰ Case No. 2017-00120, *Pollitt Enterprises, Inc., Whitney Clark Pollitt, individually, Amanda Deeann Pollitt, individually, and Basil Pollitt, individually d/b/a The Gas Group, Inc., a/k/a The Gas Group Alleged Violations of KRS 278.020, KRS 278.160, KRS 278.140, and 807 KAR 5:006, Section 4(2)* (Ky. PSC Dec. 27, 2017), Order at 11-12.

⁷¹ Case No. 2017-00120, *Pollitt Enterprises, Inc., Whitney Clark Pollitt, individually, Amanda Deeann Pollitt, individually, and Basil Pollitt, individually d/b/a The Gas Group, Inc., a/k/a The Gas Group Alleged Violations of KRS 278.020, KRS 278.160, KRS 278.140, and 807 KAR 5:006, Section 4(2)* (Ky. PSC Dec. 27, 2017), Order at 11-14.

gathering line, but instead was operating a gas distribution utility within the meaning of KRS 278.010(3)(b).⁷³

East Kentucky Midstream stated that the primary function of a gathering system is to move production gas to market.⁷⁴ However, East Kentucky Midstream provided information that indicated, in 2024, all purchased gas and local production gas was sold to customers on the system and no local production gas was moved to market.⁷⁵ Additionally, East Kentucky Midstream stated 64 percent of the natural gas on the system is being purchased from the interstate market annually to supplement service to customers.⁷⁶ This operational model is distinguishable from a gathering system which has no obligation under to KRS 278.485 to maintain a continuous supply of natural gas to end-use customers. As East Kentucky Midstream acknowledged, gathering systems are typically engaged in the collection of locally produced natural gas from wells sites and the delivery of that natural gas to the interstate market. Any farm taps served by the gathering system are ancillary to the primary function of the gathering system and the operator is not responsible for maintaining guaranteed or continuous service, particularly during periods of reduced production.⁷⁷

East Kentucky Midstream's primary functioning appears to have changed to providing gas service to individual retail customers on its system, with a secondary

⁷³ Case No. 2017-00120, Dec. 27, 2017 Order at 13-14.

⁷⁴ East Kentucky Midstream Post-Hearing Brief #2 (file June 13, 2025) at 6.

⁷⁵ East Kentucky Midstream's Response to Staff's Post-Hearing Request, Item 3.

⁷⁶ East Kentucky Midstream's Response to Staff's Post-Hearing Request, Item 3.

⁷⁷ KRS 278.485(4).

purpose of moving excess production gas to market when it is available.⁷⁸ This is supported by the actual function of the lines described in the Sander's Preliminary Report with a bi-directional flow component that has the ability to, and regularly does, function in a manner consistent with a natural gas distribution system when local production gas is low and another supply of gas, often from the interstate market, is needed.⁷⁹

In reviewing the evidence in the case record, the Commission finds that, as to the first prong, the primary purpose of the system is no longer to move local production gas to market with farm taps incidental to production. Moving locally produced gas to market has become ancillary to East Kentucky Midstream's primary function, providing gas service to the individual customers on its system.

Determining Who is Responsible for The Construction and Maintenance of The System

The Commission must next determine who is responsible for construction and maintenance of the system. Farm tap gas service lines are uniquely distinguishable from utility service because KRS 278.485(2) requires the farm tap gas recipient to "...construct or cause to be constructed, [and] maintain and keep in good repair, the service lines, [and] provide and install or cause to be installed, and keep in good repair, the necessary automatic gas regulators, [and] pay the entire cost thereof."⁸⁰ Consistent with statute, Commission regulation 807 KAR 5:026, Section 3(6-7)⁸¹ states that it is the responsibility of the customer to furnish, install and maintain all equipment necessary for service, aside

⁷⁸ East Kentucky Midstream's Response to Staff's Post-Hearing Request, Item 3.

⁷⁹ Sander's Response to East Kentucky Midstream's Request for Information (filed Sept. 17, 2024).

⁸⁰ KRS 278.485(2)

⁸¹ 807 KAR 5:026, Section 1(6) & (7).

from the meter, service tap, saddle, and first shut off valve, which are to be installed by the gas company.⁸² Construction and maintenance are not the responsibility of the gas company with farm tap gas service. Additionally, if safety issues are found on the farm tap service line, the gas company's only responsibility is to discontinue service until the customer remedies the condition.⁸³

With regard to this case, the record reflects that East Kentucky Midstream has stated that it does not know the scope of customers disconnecting their service lines from its system, and that it does not monitor the customer's service lines.⁸⁴ East Kentucky Midstream indicated that two new customers had been connected to the system since acquisition from Jefferson Gas, which required East Kentucky Midstream to install a new meter to the existing tap and existing service line that was utilized by the previous customer.⁸⁵ East Kentucky Midstream stated that it did not perform any construction activities outside of the pipeline right-of-way, which is consistent with KRS 278.485(2).⁸⁶

East Kentucky Midstream indicated some maintenance had occurred on the system, stating that it had addressed the condition issues outlined in the Sander Report that caused safety concerns.⁸⁷ The safety concerns outlined in the Sander Report indicated issues at the Van Lear compressor station and did not indicate maintenance to

⁸² 807 KAR 5:026, Section 1(6) & (7).

⁸³ 807 KAR 5:026(8).

⁸⁴ East Kentucky Midstream's Response to Staff's Second Request, Item 5.

⁸⁵ East Kentucky Midstream Responses to Post-Formal Conference Request, Item 9.

⁸⁶ East Kentucky Midstream Responses to Post-Formal Conference Request, Item 9.

⁸⁷ East Kentucky Midstream's Post-Hearing Brief #2 at 9.

customer service lines.⁸⁸ East Kentucky Midstream also indicated high gas loss percentages on its system, the highest noted being 70 percent.⁸⁹ Jack Justice, a member of East Kentucky Midstream, described the condition of the system as “[d]eemed safe but needs an orderly repair and pipe replacement program that will last for many years.”⁹⁰

In reviewing the evidence in the case record, the Commission finds that, as to the second prong, East Kentucky Midstream has required the gas recipients on its system to maintain responsibility for their service lines consistent with KRS 278.485.

Continuity of Service Provided on the System

Finally, the Commission must consider the level of continuity of service provided on the system. The Commission has considered similar questions before. For example, In Case No. 2018-00263, the Commission found that Peoples Gas was not a utility and had no duty to maintain continuity of service based on its provision of service to a limited class of persons who, based on proximity to production facilities, were entitled to gas service pursuant to KRS 278.485.⁹¹ In evaluating its findings in that case, the Commission reasoned that, by limiting its service to customers qualifying under KRS 278.485, a pipeline company is not a utility “because it has not dedicated its facilities to serve the public up to the extent of its capacity. Rather, such a company is providing gas

⁸⁸ Sander Report at 10.

⁸⁹ East Kentucky Midstream’s Responses to Staff’s Post-Hearing Requests, Item 3.

⁹⁰ Direct Testimony of Jack Justice (filed Nov. 28, 2022) at 6.

⁹¹ Case No. 2018-00263 (Ky. PSC Mar. 27, 2020) Order at 14.

service only to those within one-half mile of a producing well or gas gathering pipeline.”⁹² In contrast, East Kentucky Midstream has taken actions to provide a level of continuity of service that would be expected of a local distribution company for its customers. At the hearing held on May 19, 2025, East Kentucky Midstream stated, “[W]hen there is insufficient local production, supplies are supplemented from the interstate system at Means.”⁹³ Additionally, the Sander Report notes that East Kentucky Midstream does not differentiate between home and farm tap locations and considers all meters to be “consumer”.⁹⁴

East Kentucky Midstream’s recently approved tariff outlines that East Kentucky Midstream shall not be liable to the customer for any discontinuance of service resulting from the plugging, abandonment, or change in the use of any wells, and details that the service may be inconsistent.⁹⁵ However, East Kentucky Midstream has detailed that it is providing a consistent gas service to customers, even at times when production gas is unavailable through the purchase of gas from the interstate system, contrary to KRS 278.485(4).⁹⁶

As previously mentioned, in Case No. 2018-00263, the Commission found that Peoples Gas was not a utility and had no duty to maintain continuity of service, and was

⁹² Case No. 2018-00263 (Ky. PSC Mar. 27, 2020) Order at 15; quoting Case No. 2013-00163, *Joint Application of PNG Companies LLC, Peoples Natural Gas Company LLC, EQT Corporation, Distribution Holdco, LLC and Equitable Gas Company, LLC for Approval of Acquisition of Ownership and Control of Equitable Gas Company, LLC* (Ky. PSC Sept. 3, 2013) at 6.

⁹³ Hearing Video Transcript (HVT) of the May 19, 2025 hearing, J. Banks at 10:47:32.

⁹⁴ Sander Report at 3.

⁹⁵ East Kentucky Midstream, LLC Tariff Filing, P.S.C. Gas No. 1.

⁹⁶ East Kentucky Midstream’s Post-Hearing Brief #2 at 4.

found to not provide retail service “to or for the public” but rather provides service to a limited class of persons who, based on proximity to production facilities, are entitled to gas service pursuant to KRS 278.485. If gas supply from production is limited, there is not an obligation to source additional gas to maintain service and or pressure. The data provided demonstrates that parts of the East Kentucky Midstream system are being used in a manner consistent with a natural gas distribution system for at least six months of the year.⁹⁷ During these periods, East Kentucky Midstream purchases volumes of gas from the interstate market that exceed what can be supplied through local production in order to secure continuity of service to customers. East Kentucky Midstream provided data that indicated this operating condition was present during the calendar years of 2023, 2024, and the beginning of 2025.⁹⁸

In reviewing the evidence in the case record, the Commission finds that, as to the third prong, East Kentucky Midstream is maintaining a continuity of service through the purchase of gas from the interstate market when the production wells do not produce sufficient gas to support the customers on its system.

The Commission finds that East Kentucky Midstream has exceeded the limited-service role as outlined in KRS 278.485. Specifically, the Commission notes that, given the continuity and guarantee of service provided to East Kentucky Midstream’s customers through the significant amounts of gas purchased from the interstate market, the current, primary function of East Kentucky Midstream focuses on supplying gas to individual customers instead of the gathering of natural gas to move to interstate market.

⁹⁷ East Kentucky Midstream’s Response to Kentucky Frontier’s Post Hearing Request, Items 3.

⁹⁸ East Kentucky Midstream’s Response to Kentucky Frontier’s Post Hearing Request, Items 3.

Additionally, the Commission agrees with the finding by expert witness Sander Resources, that the bi-directional configuration of the system allows the system to operate in a manner consistent with a local distribution system as defined by KRS 278.504(3).

In reviewing the evidence in the case record, the Commission finds that East Kentucky Midstream should be deemed a jurisdictional utility pursuant to KRS 278.010(3)(b) as it is in the business of selling "...or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power, or other uses." Based on the Sander Report and the evidence in the record, the Commission finds that East Kentucky Midstream operates in a manner consistent with a local distribution system. In order to facilitate the transition to a jurisdictional utility, East Kentucky Midstream should provide notice to all its customers of any changes to rates or services as contemplated in this Order. East Kentucky Midstream should file both the notice and a new tariff setting forth both rates and terms for service for a distribution company. The Commission may review the filing pursuant to KRS 278.190 and any other applicable statute, Order or regulation.

4. Safety

The information gathered through the Sander Report noted that East Kentucky Midstream's pipeline system was designed and constructed in a manner that allows the system to operate in a bi-directional configuration.⁹⁹ This bi-directional configuration results in a system that may function at various times as gathering or distribution system, depending on the operational characteristics and service being performed.¹⁰⁰ In certain

⁹⁹ Sander Report at 3.

¹⁰⁰ Sander Report at 3.

locations the system could also meet the criteria as a transmission pipeline if the operator elects to self-designate those facilities as such for safety and compliance purposes.¹⁰¹ Based on the review completed by Sander Resources, all pipelines evaluated were determined to be subject to the jurisdiction of the Pipeline and Hazardous Materials Safety Administration (PHMSA), and at a minimum, are required to file certain information with PHMSA and the Commission.¹⁰²

Based on the determination by the Commission that East Kentucky Midstream is a jurisdictional utility, the Division of Inspections will perform a full inspection of the East Kentucky Midstream system in accordance with 49 C.F.R 192. If significant violations of 49 C.F.R 192 are present during the inspection, and remedial action is not adequate, a separate case may be opened by the Division of Inspections to address non-compliance.

SUMMARY

Since the Commission has found that East Kentucky Midstream is a jurisdictional utility as a distribution company, East Kentucky Midstream must make the following filings: (1) within 30 days, a tariff filing for a distribution company and (2) an annual report by March 31, 2026.

IT IS HEREBY ORDERED that

1. East Kentucky Midstream is a Common Carrier pursuant to KRS 278.470.
2. East Kentucky Midstream is not engaged in intrastate transmission pursuant to KRS 278.504.

¹⁰¹ Sander Report at 3.

¹⁰² Sander Report at 3.

3. East Kentucky Midstream is a jurisdictional utility pursuant to KRS 278.010(3) and KRS 278.040.

4. East Kentucky Midstream shall update its PHMSA Annual 7100 Report to reflect all jurisdictional lines in accordance with the Sander Report.

5. East Kentucky Midstream shall file an annual report with the Commission by March 31, 2026, as well as comply with all reporting requirements of a jurisdictional utility set forth in KRS Chapter 278 and 807 KAR 5:001.

6. Prior to the filing of its new tariff, East Kentucky Midstream shall provide notice pursuant to 807 KAR 5:011 and as set forth in this Order to each of its customers.

7. Within 30 days of service of this Order, East Kentucky Midstream shall file new tariff sheets pursuant to this Order using the Commission's electronic Tariff Filing System setting forth the rates, charges, and modifications necessary to operate as a distribution utility.

8. East Kentucky Midstream shall address all violations brought forward by the Division of Inspections during any post-case inspections to bring the East Kentucky Midstream system into compliance.

9. This case shall be closed and removed from the Commission's docket.

PUBLIC SERVICE COMMISSION



Chairman



Commissioner



Commissioner

ATTEST:



Executive Director



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