

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

<b>GEORGIA JOHNSON</b>	)	
	)	
<b>COMPLAINANT</b>	)	
	)	
<b>v.</b>	)	<b>CASE NO. 2018-00263</b>
	)	
<b>PEOPLES GAS KY LLC</b>	)	
	)	
<b>DEFENDANT</b>	)	
	)	
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**PEOPLES GAS KY LLC’S REQUEST TO SUBMIT CASE ON THE RECORD AND COMMENTS**

Comes the Defendant, Peoples Gas KY LLC (“Peoples KY”), by counsel, for its response to the Commission’s April 18, 2019 Order (“Order”).

**Request to Submit on Record**

Peoples KY agrees with the Commission that this matter should stand submitted for decision without a hearing because the Complaint raises a legal question regarding the status of Peoples KY’s operations that has already been decided, and recently affirmed, by the Commission.

**Comments**

The Complaint requests the Commission grant the extraordinary relief of reversing its previous orders by finding that Peoples KY is not a farm tap system, but is instead a utility for purposes of KRS 278. Because the Commission had already decided this question in a prior proceeding, Peoples KY filed a Motion to Dismiss the Complaint. Since the filing of the Motion

to Dismiss, the Commission has reaffirmed Peoples KY’s status as a farm tap system and expressly held it is not a utility for purposes of KRS 278.

## **I. Background**

Peoples KY acquired Equitable Gas Company, LLC’s (“Equitable”) assets in 2013, following the Commission’s determination that a certificate of public convenience and necessity was not required for the transaction because Equitable was only a farm tap system not subject to many of the Commission’s statutes, including 278.020, because Equitable was not a “utility” as defined by KRS 278.010.<sup>1</sup> The Commission concluded by holding that “PNG has demonstrated that it has the managerial and technical abilities necessary to provide reasonable service and that both the level and quality of service currently received by Equitable’s customers will be maintained....Equitable is a farm tap company pursuant to KRS 278.485 and not a utility as defined in KRS 278.010(3). PNG’s proposed acquisition of Equitable does not require Commission approval pursuant to KRS 278.020(5) or KRS 278.020(6).”<sup>2</sup> Peoples KY could only acquire what it purchased—a farm tap system. Once the acquisition was complete, Peoples KY memorialized its status as a farm tap system in its tariff, which states that “Peoples Gas KY LLC shall have the right to abandon gas service to any customer served from any line which is no longer operated by its supplier for any reason whatsoever.”<sup>3</sup> This is the precise situation governed by this tariff provision.

One of Peoples KY’s farm tap customers was Loran Rice, and correspondence to Mr. Rice was sent in care of Complainant Georgia Johnson. On April 23, 2018, EQT Production

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<sup>1</sup> Case No. 2013-00163, *In the Matter of: 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).

<sup>2</sup> *Id.* at 11.

<sup>3</sup> A copy of the applicable tariff that was in effect at the time Mr. Rice’s service was terminated may be accessed at: <https://psc.ky.gov/Home/Library?type=Tariffs&folder=Natural%20Gas%5CFarm%20Taps%5CPeoples%20Gas%20KY%20LLC%5CCancelled%20Tariff%20Pages%5C2018%5CRate>.

Company, which supplied gas to Peoples KY through a gathering pipeline, notified Peoples KY it was disconnecting the gas supplied by the pipeline from which Complainant is served on or about September 1, 2018. On May 16, 2018, Peoples KY promptly notified Complainant that because its gas supply in the area was being terminated, Peoples KY would no longer be able to supply gas beginning September 1, 2018. Diversified Gas and Oil PLC (“Diversified”) purchased EQT’s Southern Appalachian producing gas and oil and midstream assets, including the Kentucky wells and gathering pipelines, on July 18, 2018.<sup>4</sup> Diversified abandoned the line at issue in this case in early October 2018.<sup>5</sup> As such, there has been no gas available for Peoples to supply Mr. Rice since Diversified abandoned the line.<sup>6</sup>

## **II. Peoples KY’s Operations Remain Consistent with a Farm Tap System**

Peoples KY’s responses to Commission Staff’s discovery requests demonstrate that the operative facts that led the Commission to conclude that Equitable is a farm tap system have remained unchanged since Peoples KY began operating the system. These include:

- Peoples KY does not sell natural gas to any customer whose property and point of use is not within one-half air mile of a producing well or natural gas gathering line owned or operated by Peoples KY or one of its suppliers.<sup>7</sup>
- Peoples KY reviews the applications submitted by individuals requesting service to determine if the property to be served appears to be located within one-half air mile of a gathering pipeline.<sup>8</sup>

Peoples KY’s discovery responses also provided copies of the Domestic Gas Sales Agreement between Mr. Loran Rice and Peoples KY’s predecessor company that expressly

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<sup>4</sup> Peoples KY’s Response to Item 2 of the Commission Staff’s Initial Request for Information.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at Item 4.

<sup>8</sup> *Id.* at Item 5.

stated that service was to be provided subject to KRS 278.485, which is the farm tap statute.<sup>9</sup> In addition, Peoples KY is unaware of other pipelines or sources of supply within one-half air mile of Mr. Rice's residence.<sup>10</sup> When Peoples KY asked its supplier if Mr. Rice's meter could be moved to another location, the supplier said no other line was available.<sup>11</sup> This demonstrates that Mr. Rice was aware that he was only receiving farm tap service, and the Complaint requests relief that is operationally impossible because Peoples KY has no other supply of gas to which it can supply Complainant.

### **III. The Commission Recently Affirmed that Peoples KY is a Farm Tap System**

In March of this year, the Commission affirmed that Peoples KY is a farm tap system and not a utility as defined in KRS 278.010(3). In Case No. 2018-00369, the Commission approved the acquisition of Delta Natural Gas Company, Inc. by Aqua America, Inc. as part of a transaction in which Aqua America will indirectly own Delta, PNG Companies, LLC and Peoples KY.<sup>12</sup> The Commission's March 13, 2019 Order states that "[p]ursuant to KRS 278.020(6)-(7), Commission approval is required only for the acquisition of Delta, a natural gas utility that is subject to the Commission's jurisdiction, and not Peoples KY, which is a farm tap system." The Order further explained that "Peoples KY, a Kentucky limited liability company wholly owned by PNG, is a farm tap system with 3,000 customers in 10 counties in Eastern Kentucky. *As a farm tap system, Peoples KY is not a utility as defined in KRS 278.010(3).*

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<sup>9</sup> *Id.* at Item 7.

<sup>10</sup> *Id.* at Item 10.

<sup>11</sup> *Id.* at Item 2.

<sup>12</sup> In the Matter of: The Joint Application of Aqua America, Inc., SteelRiver Infrastructure Fund North America LP, SteelRiver LDC Investments LP, LDC Parent LLC, LDC Funding LLC, LDC Holdings LLC, PNG Companies LLC, Peoples Gas KY LLC, and Delta Natural Gas Company, Inc. for Approval of an Acquisition of Ownership and Control of PNG Companies LLC and Delta Natural Gas Company, Inc. (Case No. 2018-00369) (Ky. PSC March 13, 2019).

Because KRS 278.020(6)-(7) applies to utilities as defined in KRS 278.010(3), Commission approval is not required for Aqua America to acquire indirect ownership of Peoples KY.”<sup>13</sup>

This Order directly addresses the legal question raised by the Complainant—whether Peoples KY is a farm tap system or a public utility under KRS 278.010(3). This Commission’s Order unequivocally holds that Peoples KY is a farm tap system, which is entirely consistent with its prior orders and Peoples KY’s Commission-approved tariff that permits termination of service in the exact situation at issue in this case.

#### **IV. Conclusion**

Because the Commission’s prior orders and Peoples KY’s tariff both demonstrate that Peoples KY is a farm tap system pursuant to KRS 278.485, and is not a “utility” for purposes of KRS 278.010 or KRS 278.030, Peoples KY respectfully requests the Commission dismiss the Formal Complaint of Georgia Johnson.

Dated April 26, 2019

Respectfully submitted,

Monica H. Braun  
Stoll Keenon Ogden PLLC  
300 West Vine Street, Suite 2100  
Lexington, Kentucky 40507  
Phone: 859-231-3000  
Fax: 859-253-1093  
[Monica.braun@skofirm.com](mailto:Monica.braun@skofirm.com)

/s/Monica H. Braun

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Counsel for Peoples Gas KY LLC

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<sup>13</sup> *Id.* (emphasis added).

**CERTIFICATE**

This certifies that Peoples Gas KY LLC's electronic filing is a true and accurate copy of the documents to be filed in paper medium; that the electronic filing has been transmitted to the Commission on April 26, 2019; that a paper copy of the filing will be delivered to the Commission within two business days of the electronic filing; and that no party has been excused from participation by electronic means.

/s/Monica H. Braun

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Counsel for Peoples Gas KY LLC