

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

GEORGIA JOHNSON)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 2018-00263
)	
PEOPLES GAS KY LLC)	
)	
DEFENDANT)	
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PEOPLES GAS KY LLC’S RESPONSE TO COMPLAINANT’S COMMENTS

Comes the Defendant, Peoples Gas KY LLC (“Peoples KY”), by counsel, for its response to the Complainant’s Comments.

I. The Complainant Admits that the Commission Has Already Resolved the Legal Question of Whether Peoples KY is a Farm Tap System.

The Complainant concedes that the Commission has held that Peoples KY and its predecessor-in-interest is not a utility but is instead a farm tap system exempt from KRS 278.010(3).¹ Indeed, the Commission held in **2013** that a certificate of public convenience and necessity was not required to acquire Peoples KY’s predecessor-in-interest because “Equitable is a farm tap company pursuant to KRS 278.485 and not a utility as defined in KRS 278.010(3).”² The Commission affirmed that holding in **March 2019**, concluding 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*

¹ Complainants Comments at 6.

² 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).

as defined in KRS 278.010(3). 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.”³ These holdings are dispositive of the legal question raised in the Complaint. Moreover, Mr. Loran Rice’s contract for gas service made clear he was receiving service pursuant to KRS 278.485, the farm tap statute.⁴

II. Peoples KY’s Discovery Responses Confirm Its Operations Have Remained Consistent with Its Predecessor-in-Interest.

Peoples KY’s discovery responses made clear that its operations have remained consistent with its predecessor-in-interest and of a farm tap system. Most significantly, Peoples KY confirmed that it 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.⁵

Complainant takes issue with Peoples KY’s response to Commission Staff Item 1, which states that Peoples KY does not own any producing natural gas wells or natural gas gathering lines in Kentucky. But Peoples KY’s response made clear it is operating in the same manner as its predecessor-in-interest: “Peoples purchased the assets of Equitable Gas Company, LLC, which likewise did not own any such wells or gathering lines.” Operating the system as its predecessor did cannot convert Peoples KY from a farm tap to a utility.

III. Peoples KY’s Tariff Confirms It Is a Farm Tap System.

Peoples KY’s Tariff makes clear it is farm tap system that may discontinue natural gas service in this instance: “Peoples Gas KY LLC shall have the right to abandon gas service to any

³ *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).

⁴ Peoples KY’s Response to Item 7 of the Commission Staff’s Initial Request for Information.

⁵ Peoples KY’s Response to Item 4 of the Commission Staff’s Initial Request for Information.

customer served from any line which is no longer operated by its supplier for any reason whatsoever.”⁶ This is the precise situation governed by this tariff provision.

Complainant alleges that because Peoples KY’s Tariff mentions a service area and states that it owns the customer meter and appurtenances thereto, it is a “utility” for purposes of KRS 278.010. These arguments misstate the law. First, 807 KAR 5:011, Sections 3 and 4 *require* Peoples KY to state the service area covered by its Tariff. Indeed, the tariff of every farm tap system on file with the Commission contains such a statement, including Peoples KY.

Second, KRS 278.485(2) *requires* that Peoples KY provide and maintain the customer meter:

The applicant for such gas service shall construct or cause to be constructed, and shall maintain and keep in good repair, the service lines, and shall provide and install or cause to be installed, and keep in good repair, the necessary automatic gas regulators, and shall pay the entire cost thereof. *The company, at its own expense, shall provide, install, and maintain the necessary gas meters.*⁷

Peoples KY’s Tariff tracks the statute’s requirements:

Other than the meter, service tap, saddle and first service shut off valve, which shall be owned and maintained by Peoples Gas KY LLC, all other approved equipment and material required for service under this tariff shall be furnished, installed, and maintained by the customer at the customer's expense and shall remain the customer's property... Such other equipment shall include, but is not limited to, the line from the service tap to the point of use, gas regulation equipment, and desiccant tanks or other moisture control equipment as approved and required by Peoples Gas KY LLC.

⁶ 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>.

⁷ (emphasis added).

Complainant's allegations show only that Peoples KY is complying with the statute and regulations that govern farm tap service.⁸

IV. Complainant's Requested Relief is Operationally Impossible.

The Complaint requests that the Commission prohibit Peoples KY from discontinuing service to Mr. Rice. As explained in Peoples KY's discovery responses, Diversified Gas and Oil PLC abandoned the line at issue in this case in early October 2018.⁹ As such, there has been no gas available for Peoples KY to supply Mr. Rice since Diversified abandoned the line.¹⁰ In addition, Peoples KY is unaware of other pipelines or sources of supply within one-half air mile of Mr. Rice's residence.¹¹ 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.¹² The Complainant's requested relief is operationally impossible because Peoples KY has no other supply of gas to supply Mr. Rice, which is consistent with the limitations of farm tap service.

V. Conclusion

Because the Commission's prior orders and Peoples KY's Tariff demonstrate that Peoples KY is a farm tap system pursuant to KRS 278.485, and 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.

⁸ *Pollitt v. Commonwealth* is irrelevant to this case. In *Pollitt*, an unmarked natural gas line was discovered to be serving 50 customers through distribution lines. The Commission ordered Pollitt, the operator, to apply for a certificate of public convenience and necessity and a schedule of rates. In contrast, Peoples KY sought a certificate of public convenience and necessity when it acquired Equitable's assets, but the Commission determined a certificate was not required. Peoples KY filed its schedule of rates with the Commission, in addition to terms of service making evident it was only providing farm tap service. Finally, it is not disputed that the pipeline serving the Complainant is a gathering line connected to a single well and is not a distribution line.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at Item 10.

¹² *Id.* at Item 2.

Dated May 7, 2019

Respectfully submitted,

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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 May 7, 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

Counsel for Peoples Gas KY LLC