

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY FRONTIER GAS,) CASE NO.
LLC FOR TRANSFER OF OWNERSHIP) 2020-00241

KENTUCKY FRONTIER GAS, LLC RESPONSE TO
STAFF'S FIRST REQUEST FOR INFORMATION

Submitted by:



John N. Hughes
124 W. Todd St.
Frankfort, KY 40601
502 227 7270

Attorney for Applicants

Kentucky Frontier Gas, LLC
Case No. 20-00241
Response PSC First DR
Witness: Shute

**CASE NO. 2020-00241
KENTUCKY FRONTIER GAS, LLC RESPONSES TO
COMMISSION STAFF'S INITIAL REQUEST FOR INFORMATION**

1. Identify the state in which IGS, Inc. is incorporated and the date of its incorporation. Also, state whether IGS, Inc. is in good standing in the state in which it is incorporated, and whether it is authorized to transact business in Kentucky.

Industrial Gas Services, Inc. (IGS) was incorporated in Colorado in July 1972, and is in good standing in Colorado. IGS is registered to do business in Kentucky.

Kentucky Frontier Gas, LLC
Case No. 20-00241
Response PSC First DR
Witness: Shute

2. Provide a copy of the articles of organization for Kentucky Frontier.

Attached.

KENTUCKY FRONTIER GAS, LLC

OPERATING AGREEMENT OF LIMITED LIABILITY COMPANY

THIS AGREEMENT OF LIMITED LIABILITY COMPANY, effective as of the 1st day of January, 2019, by and among INDUSTRIAL GAS SERVICES, INC., a Colorado corporation, ROBERT J. OXFORD and STEVEN E. SHUTE, said entities being hereinafter called the "Managing Members".

In consideration of the mutual agreements contained herein, the parties agree as follows:

I.

FORMATION OF LIMITED PARTNERSHIP

1.01 Formation. The Managing Members (collectively, the "Members") formed a limited liability company (the "LLC") pursuant to the Colorado Uniform Limited Partnership Act (the "Act").

1.02 Certificate. The Members have signed a Certificate of Formation of Limited Liability Company (LLC), and have filed for record in the Office of the Secretary of State of Colorado and shall execute such further documents and take such further action as shall be appropriate to comply with the requirements of law for the formation and operation of a limited liability company.

1.03 Limitation of Liability. The liability of the LLC shall be limited as set forth in the Act.

1.04 Independent Activities. Each of the Members notwithstanding the existence of this Agreement, engage in whatever activities he or it chooses, whether the same be competitive with the LLC or otherwise, without having or incurring any obligation to offer any interest in such activities to the LLC or any other Members.

1.05 Definitions. For the purposes of this Agreement the terms used herein and described in Exhibit B hereto shall have the meanings therein indicated.

II.

NAME

The name of the LLC shall be Kentucky Frontier Gas, LLC.

III.

CHARACTER OF BUSINESS

The LLC shall engage in the business of owning and operating gas distribution systems in Eastern Kentucky, and to engage in such other lawful business as may be approved from time to time by the affirmative vote or written consent of Members holding at least a majority in interest of the LLC. Oxford and IGS, Inc. shall each have one voting interest. Shute upon acquisition of the interest of former member Rich shall have two voting interests.

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IV.

LOCATION OF PLACE OF BUSINESS

The location of the principal place of business of the Partnership shall be in Prestonsburg, Kentucky. The LLC shall have such additional or different offices as the Members may determine.

V.

TERM

The term of the LLC shall commence on the date of the compliance by the Members with the filing provisions of the Act and shall continue until August 31, 2035, unless terminated sooner pursuant to the provisions of this Agreement.

VI.

CAPITAL CONTRIBUTIONS;
SHARING OF PROFITS AND LOSSES

6.01 Capital Contributions. Each of the Members has made a cash contribution to the capital of the LLC.

6.02 Sharing of Profits and Losses. All Profits and Losses of the LLC, other than those items of income and expense specially allocated pursuant to Section 6.03 below, shall be shared among the Members in the following proportions:

- (a) Profit and Loss shall be allocated fifteen percent (15%) to the original founding Managing Members, to be shared by them in the relative proportions of their original Capital Contributions to the LLC;
- (b) The remaining eighty five percent (85%) of Profit and Loss shall be allocated to all Members, including Managing Members, to be shared

among them in the relative proportions of their Capital Contributions to the LLC.

6.03 Special Allocations. The items of Profits and Losses shall be specially allocated among the Members and their individual capital accounts as therein provided.

VII.

STATUS OF MEMBERS

7.01 Limited Liability. The Members shall not be personally liable for the expenses, liabilities or obligations of the LLC, except as provided in the Act.

7.02 Role of Members. Except as otherwise provided in this Agreement, the Members shall take no part in the conduct or control of the business of the LLC and shall have no right or authority to act for or bind the LLC.

7.03 Withdrawal of Capital Contributions. The Members shall not have the right to withdraw or reduce their contributions to the capital of the LLC, nor shall the Members have the right to demand or receive property other than cash in return for their contributions.

VIII.

AUTHORITY OF MANAGING MEMBERS

8.01 Authority. Except to the extent otherwise provided herein, the Managing Members shall have the sole and exclusive right to manage the business of the LLC, including without limitation, the right and power to:

- (a) acquire by purchase, lease or otherwise, any real or personal property which may be necessary, convenient or incidental to the accomplishment of the purposes of the LLC;
- (b) operate, maintain, finance, improve, construct, own, grant options with respect to, sell, convey, assign, mortgage and lease any real estate and any personal property necessary, convenient or incidental to the accomplishment of the purposes of the LLC;
- (c) execute any and all agreements, contracts, documents, certifications and instruments necessary or convenient in connection with the management, maintenance and operation of LLC property;
- (d) borrow money and issue evidences of indebtedness necessary, convenient or incidental to the accomplishment of the purposes of the LLC, and secure the same by mortgage, pledge or other lien on any LLC property, as

- (e) necessary to consummate the purchase or refinancing of any LLC property; provided, however, that any borrowings made other than in the ordinary course of the LLC's business shall require the affirmative vote or written consent of Members holding a majority in interest in Profits and Losses of the LLC. execute, in furtherance of any or all of the purposes of the LLC, any deed, lease, mortgage, deed of trust, mortgage note, promissory note, bill of sale, contract or other instrument purporting to convey or encumber any of all of the LLC property;
- (f) prepay in whole or in part, refinance, recast, increase, modify or extend any liabilities affecting the LLC property and in connection therewith execute any extensions or renewals of encumbrances on any or all of the LLC property;
- (g) contract on behalf of the LLC for the employment and services of employees and/or independent contractors and delegate to such persons the duty to manage or supervise any of the assets of operations of the LLC;
- (h) engage in any kind of activity and perform and carry out contracts of any kind (including contracts of insurance covering risks to LLC property and Managing Members liability) necessary or incidental to, or in connection with, the accomplishment of the purposes of the LLC, as may be lawfully carried on or performed by a LLC under the laws of each state in which the LLC is then formed or qualified; and
 - with the consent of a majority in interest in Profits and Losses of the LLC, make any and all elections for federal, state and local tax purposes including, without limitation, any election, if permitted by applicable law; (i) to adjust the basis of LLC property pursuant to Code Sections 754, 734 (b) and 743 (b), or comparable provisions of state or local law, in connection with transfers of LLC interests and LLC distributions; (ii) to extend the statute of limitations for assessment of tax deficiencies against Members with respect to adjustments to the LLC's federal, state or local tax returns; and (iii) to represent the LLC and the Members before taxing authorities or courts of competent jurisdiction in tax matters affecting the LLC and the Members in their capacity as Members, and to execute any agreements or other documents relating to or affecting such tax matters, including agreements or other documents that bind the Members with respect to such tax matters or otherwise affect the rights of the LLC or the Members.

All property of the LLC shall be acquired and held in the name of the LLC.

8.02 Duties. The Managing Members shall manage and control the LLC and shall devote themselves to the business of the LLC to the extent necessary for the efficient carrying on thereof. The Managing Members shall provide to the Members, updates and/or revisions or proposed and actual expenditures no less frequently than the end of each month. Whenever reasonably requested by a Member, the Managing Members shall within a reasonable time period render a just and faithful account of all dealings and transactions relating to the business of the LLC.

8.03 Certain Limitations. Notwithstanding the foregoing provisions of this Article VIII, without the consent of the Members, the Managing Members shall not do any of the following:

- (a) do any act which makes it impossible to carry on the business of the LLC,
- (b) confess a judgment against the LLC,
- (c) execute or deliver any assignment for the benefit of the creditors of the LLC,
- (d) possess LLC property, or sell, transfer, assign, pledge or subject to mortgage or security interest any LLC property for other than an LLC purpose,
- (e) borrow any money from the LLC, or, except as otherwise provided in this Agreement, enter into agreements, arrangements or other relationships between the LLC and a Managing Member, or between the LLC and any person or entity affiliated with a Managing Member unless such agreement, arrangement or other relationship is on terms at least as favorable as would exist if such transaction was with a party unrelated to the Managing Member.

Without the affirmative vote or written consent of Members owning at least 60% in interest in Profits and Losses of the LLC (excluding the interests therein of the Managing Members), the Managing Members shall not sell all or substantially all of the properties and assets of the LLC.

8.04 Loans by Members. In the event that at any time during the term hereof the cash funds of the LLC on hand at such time are not sufficient for payment of the expenses and obligations of the LLC, the Managing Members may advance or request that the Members advance to the LLC such funds as may be necessary to pay such expenses and obligations. Any such funds so advanced by the Partners shall bear interest (calculated on the basis of a 360 day year) on the amount advanced from day to day remaining unpaid, computed from the date of advance until payment at the rate per annum which shall from day to day be 2% in excess of the Wall Street Journal Prime Rate for commercial borrowers, each change in the rate to become effective without notice to the LLC or any Members on the effective date of each such change as published in the Wall Street Journal. No Members shall be required to make any loan or advance to the LLC unless he or it agrees to do so at the time any request for such a loan or advance is made.

8.05 Agents, Attorneys and Employees. The Managing Members may employ on behalf of the LLC such agents, attorneys and employees as they deem appropriate, and may delegate or assign to such agents, attorneys and employees such duties and responsibilities, including the negotiation, execution and delivery on behalf of the LLC of any and all agreements, documents and instruments described in Section 8.01, or otherwise, as the Managing Members may deem appropriate or necessary.

8.06 Compensation to Managing Members: Cost Reimbursement.

- (a) The Managing Members shall not receive compensation as such for their services and activities on behalf of the LLC.
- (b) The Managing Members shall be entitled to receive upon the formation of the LLC a non-accountable fee of \$150,000, if \$1,000,000 in initial capital contributions is received from the Members and to be divided among the Managing Members according to the respective amounts incurred by the Managing Members, in reimbursement of all organizational and transactional costs incurred by the Managing Members in negotiating and preparing Asset Purchase Agreements and this Agreement; ¶The Managing Members shall be reimbursed for all reasonable costs and expenses incurred by them, including an allocable portion of their general and administrative expenses, the amounts of which shall be separately identified in the budget and updates or revisions described in Section 8.02. General and administrative costs shall include customary and routine legal, accounting, engineering, insurance, travel, office rent, telephone, secretarial and other incidental reasonable expenses incurred by the

Managing Members and necessary to the conduct of LLC business. General and administrative costs do not include direct LLC costs.

8.07 Tax Matters Partners. Industrial Gas Services, Inc. (IGS) is hereby designated as the "tax matters partner" within the meaning of, and for the purposes specified in, Subchapter C of Chapter 63 of the Code.

8.08 Removal of Managing Members.

- (a) A Managing Member may be removed as managing member of the LLC for cause by the affirmative vote or written consent of Members holding at least 60% in interest in Profits and Losses of the LLC.
- (b) A Managing Member may be removed as a managing member of the LLC without cause by the affirmative vote or written consent of Members holding at least 60% in interest in Profits and Losses of the LLC provided that such Managing Member shall have been released from all obligations to the Bank and all other contractual liabilities of the LLC.
- (c) In the event of a removal of one or all of the Managing Members under this Section 8.08, the LLC shall not terminate, but shall continue with the remaining Managing Members or sole Managing Member (or if there is no remaining Managing Member, with a new Managing Member selected by a majority-in-interest of the Members acting as sole Managing Member, and with the removed Managing Member becoming a Member hereunder without any change or reduction in such Managing Member's interest in Profit and Losses.

8.09 Standard of Care. The Managing Members and any designees or nominees of the Managing Members shall not be liable for errors in judgment or any acts or omissions, whether or not disclosed, unless caused by gross negligence, willful misconduct or the breach of fiduciary duties. However, the Managing Members shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the LLC, whether or not in their immediate possession or control, and they shall not employ or permit another to employ such funds or assets in any manner except for the exclusive benefit of the LLC.

IX.

DISTRIBUTIONS

9.01 Interim Distributions. The Managing Members shall distribute among the Members not less frequently than quarterly such cash and other property and assets as the Managing Members may determine in their discretion to be available for distribution and not required for the business of the LLC. All such distributions other than upon dissolution of the LLC shall be distributed among the Members in accordance with their then respective interests in the Profits and Losses of the LLC (without giving effect to the special allocations provided in Section 6.03.) The Managing Members shall maintain such reserves as they consider necessary

for the proper maintenance, operation and development of LLC properties and the satisfaction of LLC obligations.

9.02 Distributions in Respect of Interests Transferred. Distributions of LLC assets shall be made only to persons who according to the books and records of the LLC are the holders of the LLC interests in respect of which such distributions are made. The Managing Members and the LLC shall incur no liability for making distributions in accordance with provisions of the preceding sentence, so long as the Managing Members or the LLC do not have actual knowledge or written notice of the transfer of ownership of an interest in the LLC.

X.

ACCOUNTS, RECORDS AND REPORTS

10.01 Accounts. The Managing Members shall keep complete and accurate books of account of the LLC, which shall be open to inspection by each Partner or his authorized representative at any time during ordinary business hours upon such prior notice to the Managing Members as shall be reasonable under the circumstances. Such books shall be kept on a cash receipts and disbursements basis, in accordance with federal income tax principles.

10.02 Separate Capital Account. A separate capital account shall be maintained for each Member, in accordance with the provisions of Exhibit E hereto.

10.03 Records. The Managing Members shall maintain records and files of legal, tax, and operating information pertaining to the LLC properties, which shall be available for inspection by, and copying at the expense of, each Member, or his duly authorized representative at reasonable intervals during regular business hours upon such prior notice to the Managing Members as shall be reasonable under the circumstances.

10.04 Annual Reports. The Managing Members shall provide each Member an annual report within 120 days following the close of the LLC's fiscal year, containing LLC financial statements, including a balance sheet and statements of income and Members equity, along with (i) a reconciliation of the information contained therein and the information furnished Members for income tax purposes, (ii) a detailed itemization, by type and/or classification of the total fees and compensation, including any overhead reimbursements paid by the LLC or indirectly on behalf of the LLC, to the Managing Members, and (iii) a detailed statement of any transactions between the LLC and the Managing Members. By March 1 of each year, the Managing Members shall furnish a report to each Member containing such information as is pertinent for tax purposes.

XI.

CHANGES IN LLC MEMBERSHIP

11.01 Additional Managing Members. Without the prior consent of all Members, and except as otherwise provided in this Article XI, a Managing Member shall not substitute any person or entity to its stead as a Managing Member.

11.02 Estate of Committee of Members. If a Member shall die or be adjudicated insane or incompetent, bankrupt or dissolved, his or its executors, administrators, trustees, committee, conservator or representative or any assignee, legatee, distribute or transferee ("Successor"), as the case may be, shall have the same rights and obligations as such Member would have had if he had not died or had not been adjudicated insane, incompetent or bankrupt, or had not dissolved, except that no such Successor shall become a Managing Member (other than pursuant to Section 12.02 below).

11.03 Restrictions on Transfer. No Member or Successor shall, without the written consent of the Managing Members, sell assign, convey or otherwise transfer any of his interest in the LLC except for (i) a transfer from a Member to a Successor of a Member as provided in section 11.02 or to an Affiliate of such Member or (ii) a bona fide pledge of such interest to secure indebtedness of such Member. The Managing Members shall have full discretion to grant or withhold such consent, and it shall be a condition to any sale, assignment, conveyance, transfer or pledge that it not, in the opinion of the Managing Members, (i) jeopardize the status of the LLC as a partnership for federal income tax purposes, (ii) cause a termination of the LLC within the meaning of Section 708 (b) of the Code, (iii) violate or cause the LLC to violate any applicable law or governmental rule or regulation, or (iv) jeopardize the exemption from registration under the Securities Act of 1933 and applicable state blue laws of sales of interests in the LLC.

11.04 When Transfer Effective. No assignment by a Member shall be effective to convey the subject matter thereof until the assignee and all of the Members execute all such certificates and other documents and perform all such acts which the Managing Members deem appropriate.

11.05 Substitute Members. No assignee, pledgee or Successor of the whole or any portion of a Member's interest in the LLC shall have the right to become a "substituted Member" as that term is defined in the Act without the written consent of the Managing Members, although no consent or approval of any Member shall be required. As conditions to his admission as a substituted Member, (i) any assignee, pledgee, or Successor of a Member shall execute and acknowledge such instruments, in form and substance satisfactory to the Managing Members, as the Managing Members shall deem necessary or desirable to effectuate such admission and to confirm the agreement of the person being admitted as such substituted Member to be bound by all of the terms and provisions of this Agreement, and (ii) such assignee, pledgee, or Successor shall pay all reasonable expenses in connection with his admission as a substituted Member including, but not limited to, the cost of preparing and filing any amendment of the Certificate of Limited Liability Company necessary or desirable in connection therewith.

XII.

TERMINATION

12.01 Termination.

- (a) The LLC shall terminate in the event of the dissolution, resignation, bankruptcy or insolvency of a Managing Member. Each Managing Member agrees, however, not to dissolve or resign from the LLC prior to December 31, 2011.
- (b) The LLC shall not terminate on the death, disability, dissolution, resignation, bankruptcy or insolvency of one or more Members if the remaining Members then holding at least 60% in interest in Profits and Losses of the LLC agree within ninety (90) days after the termination event in 12.01.a. to continue the LLC, provided, that, within ninety (90) days after the termination event in 12.01.a. and upon satisfaction of all loans and advances, including extensions and renewals thereof, made by Bank (as defined in Section 8.01 (d), any Member may elect upon sixty (60) days written notice to the other Members to withdraw from the LLC and receive a distribution of LLC property in kind equivalent to that which he would have received under Section 14.03 below if such withdrawal had instead been a dissolution of the LLC.

12.02 Managing Members as Retiring Members. The interest in the LLC of any Successor or permitted transferee of a Managing Member shall, unless Members then holding at least 60% in interest in Profits and Losses of the LLC otherwise agree, be a Member's interest and any such Successor or transferee shall not become a Managing Member.

XIII.

MEETINGS OF MEMBERS

13.01 Regular Informational Meetings. Informational meetings of the LLC shall be held quarterly at a time, place and date to be specified in notice provided by the Managing Members at least ten (10) days prior to each meeting. In the event that, for any reason, an informational meeting is not held within one hundred twenty (120) days after any such information meeting, any Member shall be entitled to call an informational meeting upon ten (10) days notice to the other Members specifying the time, place and date of such meeting. Informational meetings may be replaced with quarterly reports sent by electronic mail if agreed to in writing by all Members.

13.02 Special Meetings. Members holding 10% or more in interest in Profits and Losses of the LLC shall have the right at any time to request the Managing Members to call a meeting of the Members by sending to the Managing Members a written request stating the intended purpose thereof. Such call for a meeting shall be deemed to have been made upon receipt by the Managing Members of a written request from the requisite number of Members stating the purpose of the meeting. The Managing Members shall mail within 15 days after the

receipt of said request written notice to all Members of the meeting and said purpose of such meeting, which shall be held not less than 30 nor more than 60 after the date of mailing of said notice at a time and place convenient to the Members.

13.03 Participation by Members. Members may participate in a meeting of the Members by telephone or by proxy.

XIV.

DISSOLUTION AND TERMINATION

14.01 Dissolution of the LLC. The LLC shall be dissolved upon the first to occur of the following events:

- (a) any election or event requiring termination under Article XII above;
- (b) the expiration of the term of the LLC specified in Article V above; or
- (c) the sale or other disposition of all or substantially all of the assets of the LLC, unless promissory notes are received by the LLC as a portion of the consideration for the sale or other disposition of such assets.

14.02 Final Accounting. Upon dissolution of the LLC, a proper accounting shall be made of the capital of each Member and of the Profit or Loss of the LLC from the date of the last previous accounting to the date of dissolution.

14.03 Disposition of Assets. Upon dissolution of the LLC, the Liquidating Agent shall proceed to wind up the affairs of the LLC in an orderly manner. The Liquidating Agent shall collect all remaining revenues, pay the LLC's debts and liabilities and distribute its remaining assets, if any, in the order provided herein. LLC properties may be sold at such prices as may be deemed reasonable by the Liquidating Agent, provided that the Liquidating Agent may not purchase the properties except at a price and upon terms at least as favorable as those offered by an independent third party or at fair market value as determined by a qualified independent engineer or accountant, and then, only if such purchase is approved by Members then holding 80% or more in interest in the Profits and Losses of the LLC. The proceeds of any such sale as well as all other cash and remaining property of the LLC shall be distributed as follows:

- (a) all of the LLC's debts and liabilities to persons other than Members shall be paid and discharged in the order of priority provided by law,
- (b) all of the LLC's debts and liabilities to the Members shall be paid and discharged, and
- (c) all remaining assets, if any, shall be distributed to the Members in accordance with such Members' capital account balances.

In connection with any distribution in-kind of LLC properties, each Member's capital account shall first be adjusted by assuming the sale of such properties for cash at their respective

appraised fair market values and debiting or crediting the capital accounts of the parties with their respective shares of the hypothetical gains and/or losses resulting from such assumed sales in the same manner as gains and losses on disposition of such properties would be allocated under Article VI had the properties actually been sold for their appraised fair market values.

14.04 Winding Up. The winding up of the affairs of the LLC and the distribution of its assets shall be conducted exclusively by the Managing Members, unless such dissolution shall result from the removal of a Managing Member for cause, in which event a liquidating agent shall be appointed by the written consent or affirmative vote of Members holding at least a majority in interest in the Profits and Losses of the LLC. The Managing Members or such liquidating agent, as applicable, are herein referred to as the "Liquidating Agent". If notwithstanding the previous sentence the Managing Members are eligible to act as Liquidating Agent, but no Managing Member is able or willing to act, then a majority in interest or the Members may elect one or more Liquidating Agent (who may be Members) to serve in place of the Managing Members for this purpose. Assets may be distributed in cash or in kind, but any assets distributed in kind shall be subject to all operating agreements or other agreements relating thereto which survive the termination of the LLC, and any other agreement created by the Managing Members (or Liquidating Agents) at the time of distribution to govern the parties' joint ownership and operation of such assets following distribution.

14.05 Return of Capital Contributions. Except as otherwise provided in Section 6 of Exhibit B, a Member shall look solely to the assets of the LLC for the return of his capital contributions, and if the LLC property remaining after the payment of the debts and liabilities of the LLC is insufficient to return such contributions, he shall have no recourse against any other Member.

XV.

AMENDMENT OF THE LLC AGREEMENT

This Agreement may be amended by the Managing Members with the affirmative vote or written consent of Members holding at least 60% in interest in Profits and Losses of the LLC; provided, however, that this Agreement shall not be amended without the consent of Members owning 100% in interest in Profits and Losses of the LLC if the effect of any such amendment would adversely affect the Members' rights and interests in Profits and Losses of the LLC or their rights upon liquidation thereof, or if any such amendment would affect the limited liability of the Members.

XVI.

INDEMNIFICATION OF MANAGING MEMBERS

16.01 Third Party Actions. In any threatened, pending or completed action, suit or proceeding to which a Managing Member is a party or is threatened to be made a party by reason of the fact that it is a Managing Member of the LLC (other than an action by or in the right of the LLC) involving an alleged cause of action for damages to the extent arising from the LLC business, the LLC shall indemnify the Managing Members against loss, liability or expense, including attorneys' fees, judgments and amounts paid in settlement actually and reasonably

incurred, if the Managing Member acted in good faith and in a manner it reasonably believed to be in or not opposed to the best interests of the LLC, and provided that its conduct did not constitute gross negligence, willful or wanton misconduct or a breach of its fiduciary obligations to the Members or LLC.

16.02 Actions by Members. In any threatened, pending or completed action or suit by or in the right of the LLC or any Member, to which a Managing Member is a party or is threatened to be made a party, involving an alleged cause of action by a Member or Members for damages arising from the activities of the Managing Member in the management of the internal affairs of the LLC as prescribed by the LLC Agreement or by the laws of the State of Colorado, or both, the LLC shall indemnify such Managing Member against loss, liability or expense, including attorneys' fees, actually and reasonably incurred, if it acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the LLC as specified in this paragraph, except that no indemnification shall be made in respect of any claim, issue or matter as to which the Managing Member shall have been adjudged to be liable for gross negligence, misconduct or breach of fiduciary obligation in the performance of its duty to the LLC, unless and only to the extent that the court in which such action or suit is brought shall determine upon application, that, despite the adjudication of liability, but in view of all circumstances of the case, the Managing Member is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

16.03 Costs. To the extent that a Managing Member is successful on the merits or otherwise in defense of any action, suit or proceeding referred to above, or in defense of any claim, issue or matter therein, the LLC shall indemnify it against the expenses, including attorneys' fees, actually and reasonably incurred by it in connection therewith.

XVII.

POWER OF ATTORNEY

Each Member by his execution of this Agreement irrevocably constitutes and appoints each of the Managing Members with full power of substitution, as his true and lawful attorney in his name, place and stead to execute, acknowledge, swear and file (i) the original Certificate of Limited Liability Company and all amendments thereto required by law or the provisions of this Agreement, (ii) all certificates and other instruments necessary to qualify or continue the LLC as a limited liability company in which the Members have limited liability in all jurisdictions wherein the LLC is or contemplates doing business; (iii) all instruments which effect a change or modification of the LLC in accordance with this Agreement, (iv) all conveyances and other instruments necessary to effect the dissolution and termination of the LLC, (v) all fictitious or assumed name certificates required or permitted by law to be filed on behalf of the LLC, and (vi) all other instruments which may be required by law to be filed on behalf of the LLC. The power of attorney granted herein shall be deemed to be coupled with an interest and shall be irrevocable and survive the death, disability, incapacity or dissolution of a Member, or the transfer or assignment of all or a portion of his interest in the LLC.

XVIII.
NOTICES

All notices required or permitted to be given hereunder shall be in writing and shall be mailed first class mail, postage prepaid, to the Members for who intended at the address set forth at the end of this Agreement or at such address with respect to any Member as he shall specify to the Managing Members or at such address with respect to the Managing Members as they shall specify by like notice to the Members. All such notices may be sent by electronic mail if agreed to in writing by all Members and if the delivery of the email is verified with a read receipt.

XIX.
GENERAL PROVISIONS

19.01 Entire Agreement. This instrument contains the entire agreement among the Members.

19.02 Governing Law. This Agreement shall be construed in accordance with, and governed by, the laws of the State of Colorado

19.03 Binding Effect. This Agreement shall be binding upon and, except as set forth in Article XI, shall inure to the benefit of, the Members and their respective successors, heirs, personal representatives and assigns.

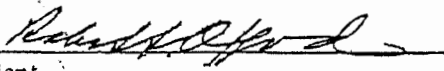
19.04 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Signature by any Member on any one of such counterparts shall bind him as soon as each of the other Members shall have signed at least one counterpart. In proving this Agreement it shall be necessary merely to exhibit the counterpart hereof executed by the Member against whom enforcement is sought without necessity for exhibiting or accounting for other counterparts.

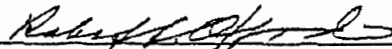
19.05 Investment Representation. Each Member represents and warrants that the interest in the LLC being acquired by him is being acquired for investment purposes only and is not being acquired with a view to or in connection with any proposed offering, distribution, resale or disposition thereof, that he has not present intention of selling or otherwise disposing of such interests and that his economic circumstances are such that he can assume all risks of the investment for an indefinite period and does not now anticipate any need to sell such interest in order to utilize the proceeds thereof.


IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

MANAGING MEMBERS:

INDUSTRIAL GAS SERVICES, INC.

By: 
President
4891 Independence Street, Suite 200
Wheat Ridge, CO 80033


ROBERT J. OXFORD
4891 Independence Street, Suite 200
Wheat Ridge, CO 80033


STEVEN E. SHUTE
P.O. Box 1054
Glenwood Springs, CO 81602-1054

Kentucky Frontier Gas, LLC
Case No. 20-00241
Response PSC First DR
Witness: Shute

3. State whether Steven Shute's current interest in Kentucky Frontier constitutes a controlling interest in the limited liability company or whether the articles of organization currently allow IGS, Inc. or Robert Oxford (or both) to control Kentucky Frontier despite holding a minority interest, and explain each basis for the response.

Steven Shute currently holds a 74% interest in the Frontier LLC. Bob Oxford and IGS (controlled by Oxford) have the remaining 26%. Since the retirement of Larry Rich in 2018, we have asserted in various instances that each member has equal voting rights, i.e. Mr. Oxford and IGS have one vote each, and Mr. Shute has two including Mr. Rich's share, regardless of the actual ownership percentage. The LLC operating agreement specifies that most actions be approved by a majority or in some cases a 60% interest; but Shute and Oxford have worked together for 25 years and this verbal arrangement seemed the best way to honor the spirit of that relationship.

4. State whether IGS, Inc. currently plays any role in the management or operations of Kentucky Frontier, and if so, describe IGS, Inc.'s role in the management or operation of Kentucky Frontier, and explain whether and how that role will change after it transfers its interest in Kentucky Frontier as proposed herein.

IGS is a member-owner but does not currently have an active role in Frontier. The only current IGS employee is Bob Oxford, who has worked directly for Frontier as a consultant, and will continue as a consultant on small projects. In the past, two other IGS employees worked with Frontier and are now a part-time employee of Frontier and a part-time gas cost consultant to Frontier.

5. State whether Robert Oxford currently plays any role in the management or operations of Kentucky Frontier, and if so, describe Mr. Oxford's role in the management or operation of Kentucky Frontier, and explain whether and how that role will change after he transfers his interest in Kentucky Frontier as proposed herein.

Bob Oxford has gradually limited his work directly for Frontier since 2018 as a part-time consultant on various specific projects in planning, engineering, administration, and regulatory matters. For a couple of years, he has not been extensively involved in a day-to-day role in management or operation. With this transition, Mr. Oxford is available to continue as a consultant on specific projects such as market development and acquisitions.

6. If either IGS, Inc. or Robert Oxford currently play a role in the management or operation of Kentucky Frontier and will not continue to act in that role, in whole or in part, after they transfer their interest in Kentucky Frontier, explain how Kentucky Frontier will fill their role.

Frontier has built a strong, cohesive team that has assumed all of IGS' role and most of Bob's duties over the last few years. Mr. Shute has been the managing partner with day to day control over operations. There is no reason that the company cannot operate without IGS or Mr. Oxford's presence. If there is a specific need, Mr. Oxford is available for consultation.

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7. State whether Kentucky Frontier has any loans or lines of credit guaranteed by Robert Oxford or IGS, Inc., and if so, explain whether Robert Oxford or IGS, Inc. will continue to act as guarantor on any of Kentucky Frontier's indebtedness or lines of credit.

Frontier has 3 remaining acquisition-related loans for Auxier Road etal (May10), BTU Gas (Jul12) and Public Gas (Dec15). Robert Oxford and IGS are guarantors on these loans.

It is the intent of KFG that Oxford and IGS be removed from such loans and Frontier has requested that they be released. Community Trust Bank has approved the release has requested the same of SBA and USDA. One SBA loan release is approved, the other is pending, and CTB will submit those approvals to USDA for its release. See Response 10.

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8. Identify the lender, the interest rate, and the current balance of any debt currently owed by Kentucky Frontier on which Robert Oxford or IGS, Inc. are guarantors, and provide the current term and payment schedule for any such debt, including any balloon payments.

Community Trust Bank, Pikeville KY holds the 3 acquisition loans in #7.

USDA #1+2 for Auxier etal was taken May10; maturity 4/13/2025; aprx balance \$700,000 at 6% APR variable (currently at floor).

SBA #1 for EKU-Belfry-Mike Little was taken Dec08; was paid off in Feb19.

SBA #2 for BTU Gas taken Jul12; maturity 11/02/2030; aprx \$130,000 at 5% APR variable (currently at floor).

SBA #3 for Public Gas was taken Dec15; maturity 7/23/2027; aprx \$1,170,000 at 5% APR variable (currently at floor).

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9. State whether the proposed transfers of Robert Oxford and IGS, Inc.'s interest in Kentucky Frontier will result in a default on any note, credit agreement, or other evidence of indebtedness on which Kentucky Frontier continues to have repayment obligations.

Frontier has readily made all loan payments on its own for several years, without any assistance from LLC members, especially since the payoff of SBA #1 in Feb19. This consolidation will not result in any default on any indebtedness of Frontier.

10. State whether the proposed transfers of Robert Oxford and IGS, Inc.'s interest in Kentucky Frontier, or the fact that they will no longer act as guarantor, if applicable, will effect Kentucky Frontier's ability to obtain the credit necessary to continue operations, and explain each basis for the response.

These transfers will not affect the ability of Frontier to obtain operating credit. Credit is currently based on Frontier's financial status. Frontier has requested from Community Trust Bank a review of these transactions and the credit capacity of Steven Shute. The bank has verbally approved these transfers and has requested the same approvals of SBA and USDA as backers of the two loans. Due to delays related to COVID-19, written confirmation from CBT, SBA and USDA has not been received and is not expected immediately.

11. Explain each basis for Kentucky Frontier's contention that Steve Shute has the financial, technical, and managerial abilities necessary to provide reasonable service to Kentucky Frontier's customers without the involvement of IGS, Inc. and Robert Oxford.

See Attached. Mr. Shute has a long history in the design, financing, construction, operation, management and ownership in natural gas and propane pipelines and distribution. He worked as General Manager of a significant division (30,000 customers) of a large regional gas transmission & distribution entity (250k). He has co-founded several gas utilities, including Frontier. He is the sole owner and executive of Pinedale Natural Gas in Wyoming, and is CEO or COO of several other gas companies. He has been the principal managing member of Frontier for several years as Larry Rich retired and Bob Oxford reduced his workload.

Frontier has built a cohesive team that does most of the day-to-day management and operation of the gas utility, with guidance from Mr. Shute, and the expectation that the team, if outside the presence of Mr. Shute or Mr. Oxford, could handle most challenges as they would.

Steven Shute is a professional engineer and owner of Pinedale Natural Gas and several small gas utilities.

Founded 16 years ago, Kentucky Frontier studied more than a dozen small gas distribution companies in eastern Kentucky. These utilities were all similar: they served 40 or 100 or 400 or 1000 customers, mostly small residential and commercial accounts; their annual gas volume had not reached a critical mass to achieve profitability; and most had negative equity and large debts. Due to chronic operating losses, these utilities were unable to pay their loans or form capital to market their services or expand systems; they weren't usually able to comply with federal & state regulations for pipeline safety, training and utility reporting; and there was little or no prospect for significant change in their financial outlook.

The consolidation of these utilities into Frontier has created a critical mass which is financially viable. Many utility functions such as billing, accounting, customer calls, emergency response, operator training and regulatory compliance are enhanced by a common, central organization.

MANAGEMENT: Steven Shute, PE. BS Electrical Engineering, Kansas State University. Professional Engineer. Mr. Shute worked with Conoco's petroleum & natural gas pipeline divisions for 3 years. He spent 11 years with KN Energy in technical and executive positions. KN or Kansas-Nebraska Natural Gas was a major constituent of Black Hills Energy, which now operates gas utilities with over 1 million customers. Mr. Shute was General Manager and Chief Engineer of a KN division with more than 25,000 meters.

In 1991 Mr. Shute founded Pipeline Solutions, Inc. (PSI) and has served as consultant, founder and owner of several small gas utilities nationwide. Following are some of those projects:

- Pinedale Natural Gas in Wyoming, Inc. 1993, 1700 customers, 100% owned.
- Town of Walden, Colorado, 930 customers, converted to a municipal utility in 1994, with 46-mile pipeline designed by Mr. Shute; PNG operates this pipeline system under contract.
- Frontier Energy, North Carolina, started 1995, franchises for 7 counties with 300,000 population; sold interest in 1998.
- Wendover Gas, Utah-Nevada; started 1997, 400 meters, consultant & 40% owner.
- Coos County pipeline; Chief Engineer on large pipeline project finished in 2004 that extended gas service to an industrial port city and county with 60,000 population.
- Kentucky Frontier Gas, co-founded 2005, now a dozen consolidated systems with nearly 6000 customers, now $\frac{3}{4}$ owner.
- Tongue River Gas in Wyoming; Dinosaur Gas in Colorado; Pilot Pipeline in Nevada; numerous feasibility studies and projects in various states of study and completion, to extend gas service to rural communities.

DECLARATION OF STEVEN SHUTE

I, Steven Shute, am a Member of Kentucky Frontier Gas, LLC, the Applicant in the referenced matter. I have read the responses and I have full authority to sign this declaration. The facts set forth therein are true and correct to the best of my knowledge, information and belief. Pursuant to KRS 523.020-040, I certify under penalty of false swearing that the foregoing is true and correct.

Dated this 4th day of September, 2020.

A handwritten signature in black ink, appearing to read 'S. Shute', is written over a solid horizontal line.

Steven Shute, Member-Manager,
Kentucky Frontier Gas, LLC