

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

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

KENTUCKY FRONTIER GAS, LLC’S REPLY BRIEF

Comes now Kentucky Frontier Gas, LLC (“Frontier”), pursuant to the Kentucky Public Service Commission’s (“Commission”) December 20, 2022 Order in this docket setting forth a deadline for filing simultaneous reply briefs, and for its reply brief respectfully states as follows:

I. ARGUMENT

A. EKM Cannot Rely on the Commission’s Decisions Regarding Jefferson Gas

EKM’s brief relies on the fact that its predecessor, Jefferson Gas, was considered a gathering system by the Commission back in the 90’s¹ and in 2009 by the Federal Energy Regulatory Commission (“FERC”)² Several decades later, EKM purchased the assets of Jefferson Gas, which had evolved greatly since the time it was originally designated as a gathering system by the Commission and later by FERC. Early on, Jefferson Gas was moving several million cubic feet per day of local production, more than enough to supply the Public Gas customers and transport the excess to interstate transmission lines. However, the fact that the system was once classified as a gathering system and the fact that EKM does not want to be regulated as a utility,³

¹ See EKM Brief p. 3-4 (January 20, 2023).

² *Columbia Gas Transmission, LLC and Jefferson Gas, LLC*, 129 FERC ¶ 61,029, p. 4.

³ Formal Conference Video Record (“FCVR”) at 10:52:12 – 10:52:28 (October 14, 2022).

doesn't mean that the classification should not now be changed. In actuality, the Kentucky Court of Appeals held "the character of a natural gas line is not static, but rather changes with the needs of its owner and the public."⁴ It is Frontier's belief that at the time that Jefferson Gas was designated as a gathering system, it owned and operated wells in the area that were connected to the Jefferson system, and Jefferson Gas was moving several million cubic feet per day. Those Jefferson-related wells are now owned and operated by Troublesome Creek and others. EKM does not own or operate any wells.⁵ EKM *purchases* gas from local producers, it does not gather and transport that gas to market to sell on behalf of the local producers. EKM is the only market. EKM purchases the gas and resells that gas to its "house customers", and a regulated utility, and a municipal utility system which has a large customer, the state prison. EKM does not want to serve farm tap customers. As evidence of this, EKM did not adopt Jefferson Gas' tariff and does not have a farm tap tariff of its own on file with the Commission. In fact, EKM has referred to farm tap customers as a "pain in the neck".⁶ At the formal conference in this matter, EKM stated that they would have any potential customer calling for a farm tap, call Frontier to receive that tap.⁷ However, there is no agreement with Frontier for this to occur.⁸ EKM has been in the business of selling natural gas, to and for the public in approximately 800 locations, for compensation, since it purchased the Jefferson Gas system in March 2021⁹ without any rate regulation whatsoever.

⁴ *Pollitt v. Public Service Comm'n*, No. 2004-CA-001516, at 7.

⁵ FCVR 10:45:01 – 10:45:10.

⁶ FCVR 10:26:28- 10:26:35.

⁷ FCVR 10:24:47 – 10:31:18.

⁸ FCVR 10:30:50 – 10:31:18.

⁹ *See*, Direct Testimony of Jack Justice, p. 1 (Nov. 28, 2022).

B. EKM is Not a Low Pressure Distribution System

EKM has claimed a Kentucky exemption as a gathering and “low pressure distribution system”.¹⁰ However, “low pressure distribution system” is a term of art in the U.S. Department of Transportation (“DOT”) realm. The definition of “low pressure distribution system is “a distribution system in which the gas pressure in the main is substantially the same as the pressure provided to the customer.”¹¹ EKM testified at the formal conference that the pressures on its lines range from 5 psi to 235 psi, depending on summer or winter months and which compressors are running.¹² These are all pressures much higher than what is provided to the customers. Therefore, EKM cannot be a “low pressure distribution system” as defined by DOT for the purposes of this exemption.

C. EKM’s System is Distinguishable From the Pollitt and Peoples KWV Gas Cases

EKM relies on the *Pollitt*¹³ and the *Peoples Gas*¹⁴ cases. EKM’s system is different than the two gas systems in those cases. In the *Pollitt* case, the Pollitt system transported gas owned by Southern Kentucky Energy, for Southern Kentucky Energy, to Southern Kentucky Energy’s

¹⁰ See, EKM’s Notice re Request for Matter to be Submitted on the Written Record p. 1, (Dec. 1, 2022); EKM’s Brief, p. 2 (Jan. 20, 2023).

¹¹ 49 C.F.R §192.3.

¹² FCVR 10:50:00 – 10:51:19.

¹³ *In re the Matter of: Pollitt Enterprises, Inc., Whitney Clark Pollitt, Individually, Amanda Deeann Pollitt, Individually and Basil C. 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 5:5006, Section 4(2)*, Order, Case No. 2017-00120, (Ky. P.S.C. Dec. 27, 2017).

¹⁴ *Electronic Application of Essential Utilities, Inc., PNG Companies LLC, Peoples Gas Ky LLC, and Delta Natural Gas Company, Inc, for (1) A Declaratory Order and (2) Increase in Rates for Peoples Gas Ky LLC*, Case No. 202-00346, Order (Ky. P.S.C. Feb. 22, 2021); *Georgia Johnson v. Peoples Gas KY, LLC*, Case No. 2018-00263, Order (Ky. P.S.C. Mar. 27, 2020); which rely on the Equitable like of cases including *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*, Order, Case No. 2013-00163 (Ky. P.S.C. Sept. 3, 2013).

customer. The Commission stated in the Pollitt case that “the pipeline classification turns upon Southern Kentucky Energy’s *use* of the Pollitt system” (emphasis added).¹⁵ The key word is “*use*”. No other entity *uses* EKM’s system. EKM does not transport gas owned by any other entity. EKM purchases all of the gas from the local producers at the interconnection point with the gathering systems owned by the local producers,¹⁶ EKM also purchases all of the FERC regulated gas that comes through the Means station¹⁷ and sells all of this gas to (1) EKM’s retail customers; (2) a regulated utility Frontier, who provides gas to and for the public; and, (3), the city of West Liberty, who also provides gas to and for the public including its large customer, the state prison. EKM provides natural gas that is ultimately for public consumption.

The EKM system is different than the Pollitt system. In Case No. 2017-00120, Southern Energy Kentucky utilized the Pollitt system to transport its gas between two Southern Energy Kentucky pipelines that both connected to the Pollitt system. The Commission listed timeframes that Southern Energy Kentucky transported gas through the Pollitt system in order to serve its end use customer.¹⁸ There was never a written contract for transportation, only a verbal day-to-day agreement.¹⁹ The Commission went on to say:

Setting aside the intermittent use of the Pollitt system by Southern Kentucky Energy, the Pollitts’ reluctance to enter into a written contract signals a lack of interest in a long-term business relationship with Southern Kentucky Energy. Without a legally binding, written contract that defines the parties’ relationship and responsibilities, the Pollitts could, at any time, stop Southern

¹⁵ Case No. 2017-00120, at p. 8.

¹⁶ FCVR 10:55:30 – 10:55:45.

¹⁷ FCVR 10:57:07 – 10:58:00 and 10:58:40-10:59:00.

¹⁸ 2017-00120 p. 8.

¹⁹ *Id.*

Kentucky Energy from utilizing the Pollitt System for any reason and without penalty.²⁰

The key difference is that no other entity utilizes EKM's system. EKM is the only entity that owns any gas that passes through its lines.

EKM is also different than the Peoples Gas system it cited its brief.²¹ This case involved the Peoples Gas system that evolved from Equitable Gas Company, LLC's ("Equitable"), which Frontier discussed in its brief.²² Equitable furnished gas service to customers from Kentucky West Virginia Gas Company ("Kentucky West Virginia"), which is Equitable's wholly owned subsidiary. "Equitable's Kentucky assets consisted primarily of a gas supply contract with EQT Energy, LLC, contracts with Equitable's customers and customer meters."²³ Thus Peoples Gas acquired only these assets of Equitable, and had no pipeline assets. EKM purchased an entire pipeline network from Jefferson Gas, not just a supply contract. EKM owns numerous pipelines, customer meters, and distribution systems to serve customers located miles off the main EKM pipeline. EKM's system is far more robust than the system at issue in the *Peoples Gas* case.

D. EKM Is Not A Gathering System

EKM keeps trying to insist that it is a gathering system, yet the Commission has held that "a gathering line is a 'pipeline that **transports** gas from a current production facility to a transmission line or main'"(emphasis added).²⁴ EKM does not transport gas from a production facility or individual wells for any entity. EKM purchases gas from various producers' gathering

²⁰ *Id.* at 9.

²¹ *Georgia Johnson v. Peoples Gas KY, LLC*, Case No. 2018-00263, Order. p. (Ky. P.S.C., March 27, 2020).

²² Kentucky Frontier Brief pp. 12-13 (Jan. 20, 2023).

²³ *Id.* at 2.

²⁴ *See, Pollitt*, Case No. 2017-00120 p. , *citing* 49 CFR Section 192.3.

systems at central connection points with EKM's transmission lines. EKM sells gas that is ultimately for public consumption and should therefore be regulated as a utility pursuant to KRS 278.010(3)(b) which defines a utility as "any person who owns, controls, operates, or manages any facility used in connection with the production, distribution, sale, or furnishing of natural gas to or for the public for compensation." EKM sells natural gas for public consumption for compensation.

EKM has eleven producers that supply 85% of the local production.²⁵ The top producer is Troublesome Creek,²⁶ which owns and operates the wells that were owned by Jefferson Gas. Most of Troublesome Creek's gas feeds directly into the Frontier system at Jackson, without entering an EKM mainline segment. The other top ten producers are all located on EKM's A2 and A3 lines.²⁷ The other 7 EKM line segments are transmission or distribution pipelines with little or no local gas, but moving gas to the next segment or supplying gas to end users.

According to EKM's responses to data requests, it has purchased a total of 958,000 Mcf of gas, and of that, 45% has been Columbia Gas Transmission gas, not local production.²⁸ EKM purchases gas off Columbia Gas Transmission every month of the year.²⁹ The CGT gas first moves on the KZ line segments, for decades operated as FERC-regulated transmission lines, and still in exactly the same service. Between the large drop in local production and assuming the KZ line supply to Frenchburg and West Liberty, Jefferson Gas had transformed to a transmission pipeline well before EKM acquired it. EKM is in the business of selling natural gas to and for ultimate consumption by the public, not gathering.

²⁵ EKM's Responses to Attorney General's First Request for Information Item No. 8.

²⁶ *Id.*

²⁷ EKM's Responses to Commission Staff's Post-Hearing Request for Information Item No. 5 (Nov. 15, 2022).

²⁸ EKM's Responses to Attorney General's First Request for Information Item No. 8.

²⁹ FCVR 10:24:36 – 10:25:50.

E. EKM Cannot Continue to be an Unregulated Supplier to a Regulated Utility

Over its history, EKM has charged Frontier *about double* the cost per MCF of gas than Frontier has paid to all other suppliers. Apart from EKM, Frontier's gas index and supplier charges are similar to all other Kentucky utilities, so based on the information Frontier has, EKM is charging *about double* the price paid by 700,000 other gas users in Kentucky. Frontier is about half the total EKM load, and has paid margins and fees to EKM of more than \$1.3 million. This figure is about the same amount EKM reputedly paid for the Jefferson Gas system. Regulated utilities should not be hostage to single-source, common carrier suppliers that expect 100% returns on investment.

CONCLUSION

EKM discusses how important it is to the eastern Kentucky area in its brief, and at the formal conference stated that if it were to become regulated it could “create a sticky situation” in eastern Kentucky.³⁰ EKM does not want to have to spend the money to get its system up to being a utility level system.³¹ With all due respect, Frontier is as important, if not more important to this area than EKM. Frontier has invested approximately \$8 million in the systems it has acquired in eastern Kentucky. Frontier has 360 miles of pipeline throughout eastern Kentucky which serves approximately 5500 customers, including farm taps, and employs nearly 20 people in the eastern Kentucky area. EKM figures show that Frontier is EKM's largest customer and EKM has admitted that Frontier is “a valuable customer” for EKM and that EKM would like to continue the relationship with Frontier.³² EKM's counsel also stated at the formal conference in this matter

³⁰ FCVR 11:34:45 – 11:36:00.

³¹ *Id.*

³² FCVR 11:34:00-11:34:15.

that EKM would like to continue the conversation with Frontier.³³ However, since the formal conference in this matter, there have been no discussions on establishing a reasonable rate for Frontier to purchase gas from EKM.

Frontier has purchased and operates approximately a dozen small gas utilities in eastern Kentucky. The rates that Frontier has to pay to EKM for gas to serve the former Public Gas system extend the impact to all of Frontier's customers, not just the former Public Gas customers. The cost of gas that Frontier must pay to EKM, since EKM is the only source of gas for the former Public Gas customers, increases the bills of all 5000 Frontier customers by approximately \$140 per year. EKM's markup of its gas costs to Frontier hurts thousands of customers in the eastern Kentucky area, not just the area where the former Public Gas customers are located. Therefore, Frontier serves 5000 customers throughout eastern Kentucky that are all affected by the higher gas costs that are paid to EKM. This is a huge impact to the gas customers of eastern Kentucky.

Respectfully submitted,



L. Allyson Honaker
HONAKER LAW OFFICE, PLLC
1795 Alysheba Way, Suite 6202
Lexington, KY 40509
(859) 368-8803
allyson@hloky.com

Counsel for Kentucky Frontier Gas, LLC.

³³ FCVR 11:34:15-11:34:20.

CERTIFICATE OF SERVICE

This is to certify that the foregoing electronic filing was transmitted to the Commission on February 9, 2023 and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding. Pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085 no paper copies of this filing will be filed.



Counsel for Kentucky Frontier Gas, LLC