

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 COMPLIANCE WITH KRS CHAPTER 278,)	2022-00238
807 KAR CHAPTER 005, AND 49 CFR PARTS 191 AND 192)	

KENTUCKY FRONTIER GAS, LLC’S POST-HEARING BRIEF

Comes now Kentucky Frontier Gas, LLC (“Kentucky Frontier”), pursuant to the Kentucky Public Service Commission’s (“Commission”) May 22, 2025 Order in this docket setting forth a deadline for filing simultaneous briefs and for its post-hearing brief respectfully states as follows:

I. INTRODUCTION

On August 11, 2022, the Commission opened this investigative proceeding to investigate the jurisdictional status of East Kentucky Midstream (“EKM”) and its compliance with KRS Chapter 278, 807 KAR Chapter 005, and 49 C.F.R. Parts 191 and 192. On August 12, 2022 the Commission amended its August 11th Order to expand the scope of the proceeding to include whether EKM is subject to the Commission’s jurisdiction under any provision of KRS Chapter 278 and made Kentucky Frontier a party to the proceeding. The Kentucky Attorney General’s Office (“AG”) filed a motion to intervene on August 12, 2022 and the AG’s motion was granted by the Commission on August 22, 2022. Commission Staff, Kentucky Frontier, and the AG issued data requests to EKM and EKM filed responses to those requests on September 26, 2022. The Commission issued an Order on October 4, 2022 setting a formal conference for October 14, 2022. The formal conference was held on October 14, 2022 with all parties participating. Kentucky Frontier filed the Direct Testimony of Steve Shute on October 26, 2022 and responded to post-

formal conference data requests on November 16, 2022. EKM filed responses to post-formal conference data requests on November 16, 2022 and filed testimony of Jack Justice on November 28, 2022. After a request for formal hearing and a motion to set a briefing schedule if a formal hearing was not scheduled by Kentucky Frontier and a motion filed by EKM to submit the case on the record, the Commission issued an Order on December 20, 2022 establishing a briefing schedule. Kentucky Frontier and EKM both filed briefs on January 20, 2023. Kentucky Frontier, EKM, and the AG filed reply briefs on February 9, 2023. After briefs were filed, the Commission issued subpoenas and conducted depositions on June 22, 2023. Commission Staff issued post-deposition data requests on July 14, 2023 and EKM responded to the post-deposition data requests on August 10, 2023. On August 16, 2023 the Commission entered an Order forbidding EKM from materially altering the operation or configuration of its system without notifying the Commission and ordering EKM to document its existing operation and configuration of any connection to its system.

On March 25, 2024 the Commission entered an Order notifying the parties that it hired Sander Resources, LLC (“Sander Resources”) to conduct a field assessment of EKM’s natural gas pipeline system. Sander Resources filed a report into the record of this proceeding on July 16, 2024. Kentucky Frontier and EKM both filed comments on the Sander Resources report on July 22, 2024. On August 8, 2024, the Commission issued an amended procedural schedule. On August 20, 2024 EKM issued data requests to Sander Resources. Kentucky Frontier filed rebuttal testimony on August 30, 2024. Sander Resources filed responses to EKM’s data requests on September 17, 2024. Each party filed its stance on whether a hearing was needed in this matter and the Commission issued an Order on December 4, 2024 scheduling this matter for hearing on February 20-21, 2025. EKM filed a motion to reschedule the hearing and the Commission granted

the motion on February 7, 2025 and scheduled an informal conference for February 21, 2025. The parties participated in a virtual information conference on February 21, 2025 and the Commission issued an Order on March 11, 2025 scheduling a formal hearing for May 19, 2025. A formal hearing was held on May 19, 2025 and a post-hearing procedural schedule was entered on May 22, 2025.

II. ARGUMENT

Kentucky Frontier incorporates its brief filed on July 20, 2023 and its reply brief filed on February 9, 2023 in this proceeding as if fully set forth herein. EKM is a distribution system and should be regulated by the Commission.

As stated by Kentucky Frontier witness Steven Shute, Frontier is “between the hammer and the anvil”.¹ Kentucky Frontier consolidated about a dozen tiny gas utilities and is regulated by the Commission. About one-third of Kentucky Frontier customers and gas supply are in the former Public Gas system and are solely supplied by EKM.² Nearly all of these customers are fed from EKM lines KZ-East, C-line, A-1 and A-2.³ These lines are judged by the Sander Resources report and testimony to be distribution lines, under flow conditions that apply most of the year.⁴ And yet EKM is allowed to charge whatever it wants for gas, and Kentucky Frontier has no option but to pay up, and pass through to all of its customers, not just the former Public Gas customers.

At one point, the old Jefferson Gas system may have truly been a gathering system; however, it changed over time and is now a distribution system. As shown in the Sander

¹ Formal Hearing, Hearing Video Record 1:29:50 – 1:29:54, (May, 19, 2025). (“HVR”)

² HVR 1:08:35-1:08:50.

³ Sander Resources Report; HVR 1:09:45-1:10:05.

⁴ *See*, Sander Report generally.

Resources report and as testified to at the hearing by Kentucky Frontier witnesses, most of the EKM system now functions the same as Kentucky Frontier's system.

- Kentucky Frontier and EKM both have approximately 350 miles of pipeline with the same size pipes and pressures.⁵
- Both have approximately 400,000 Mcf annual sales.⁶
- Kentucky Frontier has 17 operations employees and trucks while EKM has three or four.⁷
- They both buy natural gas from FERC regulated pipelines and local producers and deliver that natural gas to end-use customers at hundreds of locations.⁸
- Both have about two dozen gathering points from local producers. In some warmer months of the year, the local production is enough so that natural gas is not purchased from a FERC-regulated pipeline.⁹
- EKM receives 64% of its annual gas supply from TC Energy at Means. Apart from Public Gas and EKM, Kentucky Frontier receives 38% of its annual gas supply from FERC pipelines, and the rest from producers and gathering pipelines.¹⁰

Transportation charges are traditionally calculated as operating costs divided by volume, where these systems are very similar. Based on the information provided by EKM in 2021 when EKM

⁵ HVR 1:27:30 - 1:27:50.

⁶ HVR 1:28:00 – 1:28:16.

⁷ HVR 1:28:45 - 1:28:55.

⁸ HVR 1:31:00 – 1:33:02

⁹ HVR 1:31:35 - 1:32:29.

¹⁰ EKM's Response to Commission Staff's Post-Hearing Request for Information, Items 3 and 5, (June 10, 2025).

requested Kentucky Frontier to manage the EKM system,¹¹ the cost to run the system is approximately \$1.00 to \$1.50 per Mcf above gas cost,¹² yet EKM charges \$7.00 per Mcf or more margin.¹³ Kentucky Frontier's regulated tariff is \$4.00 per Mcf.¹⁴

As stated by EKM witness, Jack Banks at the formal hearing in this matter, EKM does not own any wells.¹⁵ However, Jack Justice, a member of EKM, which is a member-managed company, and EKM's members also own Lawrence County Gas.¹⁶ Lawrence County Gas has at least four gas meters connected to EKM's system¹⁷ and is the third largest producer on EKM's system.¹⁸ At the time of the hearing, EKM stated that it was selling excess gas to the market,¹⁹ but that had just started back in April and would stop once "it was time to put coats on".²⁰ In response to a Commission Staff's Post-Hearing Request for Information Items 3 and 5, EKM showed that in 2023-25, it delivered excess gas to TC Energy at Van Lear only 7 of 28 months. In that period, EKM purchased 64% of the natural gas that it sold to its customers, Kentucky Frontier, Delta Gas, West Liberty and the state prison, from TC Energy.²¹ In the winter months November to March,

¹¹ EKM rescinded the request for Kentucky Frontier to operate the system.

¹² HVR 1:22:15-1:22:35

¹³ HVR 1:29:25 – 1:29:43.

¹⁴ *Id.*

¹⁵ HVR 11:07:25-11:07:47.

¹⁶ EKM's Responses to Kentucky Frontier's First Request for Information, Item 2, (Sept. 26, 2022).

¹⁷ *Id.*

¹⁸ EKM's Responses to Attorney General's First Request for Information, Item 8, (Sept. 26, 2022).

¹⁹ HVR 10:51:25-10:51:43.

²⁰ HVR 11:19:30 – 11:20:42.

²¹ EKM's Response to Commission Staff's Post-Hearing Data Request, Items 3 and 5 (June 10, 2025).

the FERC pipeline averaged 75% of EKM volume. A predominantly distribution pipeline cannot revert back and forth to gathering and cannot “gather” FERC-regulated gas delivered from TC Energy.²²

The Sander Resources report states that the fact that there is one producer on the KZ East line “does not change the classification of the system.”²³ EKM’s argument that simply having local producers connected to its system makes it a gathering system is simply incorrect. TC Energy supplies 64% of EKM gas year-round and 75% in winter.²⁴ Lindsay Sander generally testified that EKM cannot revert FERC gas to gathering and once the system is used for a different purpose besides gathering, it cannot turn back to gathering.²⁵ The Sander Resources report classifies the majority of EKM’s system as distribution, for the majority of the year.²⁶

If EKM is allowed to continue to operate as a distribution system without rate regulation by the Commission, each of Kentucky Frontier’s customers will continue to suffer financially. EKM is the only source of gas for the former Public Gas customers now served by Kentucky Frontier. With this monopoly, EKM is able to charge Kentucky Frontier wildly high rates without any recourse or oversight. Because Kentucky Frontier must pass through these excessive charges, each of its 5,000 customers throughout all of Kentucky Frontier’s little systems must pay approximately \$2.00 per Mcf more or \$120.00 more per year than they would be paying if EKM

²² Lindsey Sander Hearing Testimony Confidential Session (testimony was not confidential but map presented during testimony was confidential); HVR 1:39:10 – 1:39:22.

²³ Sander Resources Report, p.14.

²⁴ EKM Response to Commission Staff’s Post-Hearing Request for Information, Items 3 and 5, (June 10, 2025); HVR 1:05:45-1:06-45.

²⁵ Lindsey Sander Hearing Testimony Confidential Session (testimony was not confidential but map presented during testimony was confidential); HVR 1:39:10 – 1:39:22.

²⁶ See, Sander Resources Report generally.

were a regulated utility.²⁷ Kentucky Frontier must pay these inflated prices or abandon gas service to its customers.

Moreover, EKM witness, Jack Banks, testified that Kentucky Frontier was charged critical day pricing for every Mcf of natural gas EKM sold to Kentucky Frontier on the critical days that occurred in February.²⁸ Critical days are designated as such by TC Energy and the critical day pricing applies only to the natural gas purchased from TC Energy.²⁹ This implies that 100% of EKM's supply to Frontier was FERC gas, in those weeks.³⁰ Purchasing natural gas from TC Energy and distribution of that natural gas to retail, utility, and municipal customers are the actions of a regulated utility, not an unregulated gathering system. If EKM is an unregulated gathering system, then Kentucky Frontier's system is as well.

CONCLUSION

EKM is not a gathering system. EKM gets two-thirds of its gas from a FERC-regulated pipeline all year, and up to 85% in the winter months. EKM does have some local production on its system, but it does not gather that gas and transport it to a market, most of the year. The Sander Resources report correctly stated that the fact that it may have a local producer on a line segment, does not change the classification of distribution.

EKM is distributing natural gas for consumption to or for the public. It is a utility as that term is defined in KRS 278.010 and should be regulated for rates and services by the Commission. EKM should not be allowed to continue to take advantage of the fact that it is the only source of natural gas that Kentucky Frontier has to provide service to the former Public Gas customers and

²⁷ HVT 1:22:45 – 1:24:37.

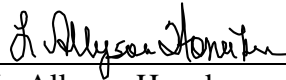
²⁸ HVR 10:52:44 – 10:54:50; HVR 1:34:00 – 1:36:00.

²⁹ *Id.*

³⁰ *Id.*

should not be allowed to cause financial harm to all Kentucky Frontier customers based on its excessive charges.

Respectfully submitted,

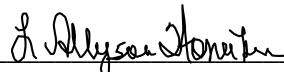


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CERTIFICATE OF SERVICE

This is to certify that the foregoing electronic filing was transmitted to the Commission on June 13, 2025 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