COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Electronic Investigation of Jurisdictional Status of East Kentucky Midstream, LLC, and of its Compliance with KRS Chapter 278, 807 KAR Chapter 005, and 49 CFR Parts 191 and 192	))))	Case No. 2022-00238

East Kentucky Midstream, LLC
Response to Kentucky Frontier Gas Post-Hearing Brief

Comes East Kentucky Midstream, LLC ("EKM"), by counsel, and for its Response to the post-hearing brief of Kentucky Frontier Gas ("KFG"), hereby states as follows.

Introduction

KFG's brief contains a hodge-podge of asserted statistics, statements taken out of context, and inapt comparisons, failing to provide a sensible answer to Chair Hatton's question posed to KFG's owner Steve Shute: "This case has now boiled down to basically one issue and that's whether or not EKM is going to be classified as a jurisdictional utility — how does that determination help this situation?"[1] KFG wants EKM to be treated as a utility, and attempts three arguments for that result. First, it contends that KFG and EKM are similar and so, since it is treated as a utility, then EKM should be too.[2] Second, it asserts that the Sander Report and Sander personnel's hearing testimony consider the lines through which KFG "feeds" former customers of Public Gas "to be distribution lines, under flow conditions that apply most of the

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[1] 5/19/25 Hearing 4:25:10–4:25:22
[2] KFG Init. Brf. p. 4.

year,"[3] and therefore EKM is a distribution system, which KFG wrongly equates with a jurisdictional LDC utility.[4] Third, KFG maintains/predicts/hopes without any rational basis that full economic regulation of EKM (as a utility) will mean that KFG will pay a lower delivered price for gas it obtains through EKM.[5] None of these arguments is well-supported, and the evidence in this record or of which the Commission may take administrative notice is to the contrary. EKM incorporates its briefs filed in this proceeding on July 20, 2023, February 9, 2023, and June 16, 2025, as if fully set forth herein and further shows that KFG's assertion that EKM should be subject to utility regulation is contradicted by Kentucky law, the history and purpose of the KFG and EKM systems, and the data.

Argument

Distinct and apart from Pipeline and Hazardous Materials Safety Administration (PHMSA) classifications of various segments of the EKM system, for purposes of Kentucky law and PSC economic regulation, EKM is a gathering or "farm tap" system largely excluded by statute from PSC jurisdiction over rates and terms of service. KFG's brief makes clear that the contractual price for gas is its only concern, while ignoring the broader benefits of EKM to producers and consumers of natural gas in the region. It is these regional benefits that inform the legislative distinction between utilities and gas gathering (a.k.a. farm-tap) systems and require a determination that the Commission's jurisdiction over EKM is limited to safety regulation and its farm-tap tariff.

[3] KFG Init. Brf. p.3.
[4] KFG Init. Brf. p. 6.
[5] KFG Init. Brf. pp. 6-7.

1. **By purpose, design, and function, the EKM system is a gas-gathering system relative to KFG's amalgamated utility system.**

If Steven Shute believes he is "between the hammer and the anvil" as stated in KFG's post-hearing brief, he willingly placed himself there. KFG had previous experience with EKM's predecessor when it relied on the Jefferson system for gas supply as a solution to KFG's lack of access to sufficient local producer gas to serve KFG's former Auxier customers during the brutally-cold winter of 2014.[6] Less than a year after connecting those KFG customers to the Jefferson system, which thankfully could supply gas when needed from the interstate system, KFG purchased the assets of Public Gas.[7] KFG acquired the Public Gas system in 2015, at least in part, because what is now the EKM system is a reliable source of natural gas for customers. As Mr. Shute testified to in the Formal Conference in this proceeding, KFG acquired the Public Gas system in knowing it only had one supplier of gas at the time.[8]

KFG now seeks to use this proceeding to place EKM under the regulations for utilities. It does so by complaining that the geographically-averaged, unified rates it charges to nearly all KFG's utility customers (including those unconnected to the EKM system)[9] are somehow unfair because they include the cost of gas supplied by EKM to KFG systems connected to EKM. KFG's brief claims "EKM is allowed to charge whatever it wants for gas, and KFG has no

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[6] Case No. 2014-00038, *Charles E Hardin, Jr., Individually and Charles E. Hardin, Jr., Magoffin County Judge Executive o/b/o The Magoffin Fiscal Court and Consumers of Magoffin County Receiving Natural Gas Services from Kentucky Frontier Gas, LLC — Complainants v. Kentucky Frontier Gas, LLC,* Final Order, Dec. 11, 2014 at 2, "Frontier discussed its plan for reconfiguring its compressor station at its connection to the Jefferson Gas, LLC ('Jefferson') system to allow Frontier to accept a supply of gas from Jefferson to meet increased demands and ensure a reliable supply of natural gas."

[7] Case No. 2015-00299, *Joint Application of Kentucky Frontier Gas, LLC and Public Gas Company for Approval of Transfer and Acquisition of Assets and Financing,* filed Sept. 4, 2015.

[8] Formal Conference Hearing Video at 2:08:27-2:08:36 (when asked whether Mr. Shute was aware when he purchased Public Gas that there was only one supplier, he replied, "sure.")

[9] Exceptions are KFG's customers under the farm-tap tariff and the higher charges to the former customers of the Daysboro (Wolfe County) under the utility tariff adopted by KFG and separately-categorized in its current tariff for utility customers.

option but to pay up."[10] This is simply not true. EKM charges KFG a contractual price for gas supply. KFG has every right to connect to any source of gas supply in the region and previously testified to owning and operating a piped propane gas system in another state.[11] In response to the question of how KFG serves its disparate geographic service areas, Mr. Shute testified that KFG "takes gas in 40 separate places, that probably includes some of those off EKM."[12] KFG's entire business model, indeed all utility models, are based on socialized costs and some customers subsidizing others. Rural customers at the far end of any system cost more to serve than clusters of customers near sources of supply. The fact that the cost of providing natural gas to customers on one portion of the KFG system is higher should not be used to justify additional regulation of the gas supplier.

KFG argues, because the two companies have similar statistics for pipeline miles and customers, and both receive some portion of interstate gas, somehow that makes EKM a utility. EKM sells producer gas to markets, wholesale customers, and farm tap customers, which makes it a gathering system. In fact, EKM sells ALL the producer gas available to those local markets and to interstate markets when there is excess. The fact that EKM supplements that producer gas with interstate gas when needed does not change its gathering purpose.[13] KFG does not sell producer gas to markets, it sells to its customers what limited producer gas it receives directly, in other words — like all other gas it receives — it distributes to or for the public for compensation.

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[10] KFG Brief at 3.

[11] Formal Conference Hearing Video at 2:07:35-2:08:38.

[12] HVR at 3:58:50-3:59:05.

[13] See EKM Post Formal Conference Brief at pp. 3-4 & fn.12; Columbia Gas Transmission, LLC and Jefferson Gas, LLC, 129 FERC ¶ 61,029, at P 26 ("incidental interstate transportation service" did not "affect[] the non-jurisdictional status" of gathering operations). See also Equitrans, L.P. and Big Dog Midstream, LLC, 181 FERC ¶ 61,235, at P 34 ("allow[ing] the gathering company to provide incidental interstate transportation service through the newly acquired facilities without affecting the non-jurisdictional status of its gathering operations").

KFG has purchased numerous small, "geographically distinct"[14] systems in an attempt to consolidate them into one utility. It has availed itself of utility financing and substantive due process (economic) protections in exchange for assuming an obligation to serve customers. Most notably, when KFG acquires several systems, it almost immediately raises fees and rates, and begins laying the groundwork for future rate increases through its Advanced Meter Reading and Pipeline Replacement Programs.[15]

Regarding EKM gas purchases from TC Energy (volumes and percentage of totals), KFG cherry-picks unexplained statistics (e.g., 75% of "winter" purchases from TCE[16]), while ignoring the actual volumes of producer gas consumed on the system. Further, KFG gives no recognition to the low 2024 prices that discouraged local production and resulted in some producers shutting in wells to avoid losses.

KFG complains about the critical day prices being paid only by KFG customers. Critical days are the exception, not the rule, and occur only on extremely cold days of high demand. Extreme cold also affects producer wells and limits gas flows. All available local produced gas was being consumed on the days in question and was insufficient to even serve EKM farm tap customers. To maintain an available supply for ALL customers on the system, EKM had to

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[14] Case No. 2011-00017, *Request of Kentucky Frontier Gas, LLC for Deviation from 807 KAR 5:022, Section 13(17)(G)(4),* 2/21/12 Order, pp. 2-3.

[15] *See e.g.,* Case No. 2011-00443, *Application of Kentucky Frontier Gas, LLC for Approval and Consolidation of and Adjustment of Rates, Approval of AMR Equipment and Certificate of Convenience and Necessity for Installation of AMR, Pipeline Replacement Program, Revision of Non-Recurring Fees and Revision of Tariffs,* Order, 7/16/13 and Post Case Files, (KFG initially proposed spending $70-100,000 annually for AMR and PRP, but quickly increased proposed annual amounts to $150-$200,000, for which it will no doubt seek future recovery). *See also,* Data included with KFG's unified GCA application for Case No. 2020-00324, filed Oct. 1, 2020, responding to data request from Appendix B to the 7/24/20 Order in Case No. 2020-00216, showed that each and every one of KFG's utility customers was being charged $1.00 and $5.00 per month, respectively, for the AMR installation and main replacements program.

[16] KFG Brief pp. 5-6.

supplement with TC gas. EKM was paying those same prices for additional gas. Since EKM was only allowed to charge its farm tap customers the Commission approved tariff rate, EKM lost money maintaining service to its farm tap customers. Unlike EKM's farm tap tariff, KFG's contract for gas supply includes the commodity price for gas—a straight pass through, which KFG paid to ensure gas was available to its customers. Again, KFG was aware that EKM's connection to the interstate system represented a critical source of supply when local demand exceeded local production when it acquired the Public Gas system.

2. Sander classification of many segments of the EKM system as "distribution" does not support economic regulation of EKM as a "utility."

KFG argues that EKM is a distribution system and should be fully regulated by the Commission for rates and terms of service. In support of this position, KFG cites the Sander Report and Ms. Sander's hearing testimony regarding PHMSA classifications of various segments of the EKM system. This argument ignores both the purpose of PHMSA classific-ations and Kentucky law, which excludes Kentucky gathering systems from regulation by the Commission for anything other than safety and farm tap service. As testified by Sander Resources employee Dewayne Sims, there are producer meters throughout the EKM system,[17] which undoubtedly makes EKM a gathering system for purposes of Kentucky law and PSC jurisdiction. Moreover, Ms. Sander herself repeatedly affirmed that the findings for classification of various segments of the EKM system were for PHMSA reliability purposes, not state

[17] Confidential Session Hearing Video 11:05-34-15 (discussion of various segments).

economic regulation.[18] As such, despite what KFG asserts in their brief,[19] the Sander witnesses were clear that statements made about gas from transmission not being able to revert back to gathering were in the context of PHMSA classifications.

3. KFG does not show any benefits to utility customers from changing the regulation of EKM to that of a utility.

KFG assumes that it is being charged an outrageous price by EKM for the gas supplied to it, but never bothers to provide reliable, consistent data about what it is being charged, what a reasonable "transportation charge" would be, or how regulation of EKM as a utility will benefit KFG's utility customers in any way. KFG's only concern is the price it pays for gas supplied by EKM, and it presumes — again, without any reasonable showing — that Commission regulation of EKM as a utility will lower that price. It completely ignores the information relating to the Commission's approval of rates for EKM's farm-tap customers in Case No. 2023-00112 and instead relies on vague estimates from unspecified information and inaccurate comparisons.

In its Brief (p.4), KFG notes that "transportation charges are traditionally calculated as operating costs divided by volume." In the 5/20/24 final Order in Case No. 2023-00112, the Commission approved a usage charge to EKM's farm-tap customers of $13.00 per Mcf.[20] This rate included a $7.12 per Mcf contribution to <u>a portion</u> of EKM's non-gas operating costs from

[18] *Id.* At 52:20 (functionality discussion), 53:45 ("for safety purposes"), 1:04:25 ("for purposes of PHMSA regulations/safety"), 1:11:10 (response to Chair Hatton: "for rate regulation, in all honesty, its done on a state-by-state level"), 1:14:20 ("Kentucky is a sensitive area because it is low producing wells, it's old school production, low volumes"), 1:19:40 (distinguished between PHMSA and rate analysis—report was limited to PHMSA).

[19] KFG Brief p. 6.

[20] *See* EKM's farm-tap service tariff, PSC KY No.1, eff. May 20, 2024, original sheet no.3. The tariff is attached to EKM's 6/10/25 Response to PH PSC 02 and is available through Commission records at https://psc.ky.gov/tariffs/Natural%20Gas/Farm%20Taps/East%20Kentucky%20Midstream,%20LLC/Tariff.pdf (last visited June 27, 2025).

the 2022 "test year".[21] The operating costs contributed-to did not include such significant operating categories as depreciation, amortization, or compressor expense,[22] and a newly instituted per-month customer charge also contributed to covering those partial operating expenses.[23] This publicly-available, Commission-scrutinized data supports a conclusion that a "traditionally calculated" transportation charge for EKM would be well in excess of $7.00/Mcf.

Yet KFG complains about the "7.00 per Mcf or more margin" asserted to be charged by EKM.[24] No basis for this "$7.00 … or more margin" is given, and it cannot be derived from the billing information KFG reported in its most recent concluded PGA proceeding, Case No. 2025-00067.[25] The supplier invoices KFG submitted with its 3/27/25 Application show that EKM consistently charges it a $5.75/Dth Transport Rate; neither conversion to Mcf units nor (incorrect) attribution of LAUF charges to transport rather than gas cost yields a margin as high as $7.00/Mcf. KFG also compares this supposed $7.00+ margin to its own "regulated tariff [of] $4.00 per Mcf."[26] However, there are at least two problems with this comparative. First, the $4.00 per Mcf base in the usage charge is from KFG's farm-tap tariff,[27] not its fully-regulated utility tariff. Except for non-Daysboro large commercial customers (which pay a $50/month customer charge), the base in the usage charge for KFG utility customers is greater than $4.00/Mcf; for Daysboro commercial customers, it is $8.57 per Mcf.[28] If anything, the higher

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[21] *See* Supplemental and Revised Application Exhibit D, pp. 2-3, submitted 6/29/23 in Case No. 2022-00112 with Notice of Filing to Cure Deficiencies.

[22] *See id.* p. 2.

[23] If the partial operating expenses were to be recovered solely by a usage charge, the non-gas portion of the usage charge would increase to $8.97/Mcf. *See id.* p.3.

[24] KFG Brief p. 5, citing Steve Shute hearing testimony [HVR 1:29:25–1:29:43].

[25] The $5.75/Dth rate charged to KFG translates to a $6.35/Mcf rate.

[26] KFG Brief p. 5, citing Steve Shute hearing testimony [HVR 1:29:25–1:29:43]

[27] *See* KFG Farm-Tap Tariff PSC No.2, sheet no. 6 (eff. 11/1/15).

[28] *See* KFG Distribution System Tariff PSC No.3; 36th rev'd sheet no.4 (eff. May 1, 2025).

base rate for utility rather than farm-tap customers, supports a conclusion that full utility regulation of EKM's rates may lead to increases. Second, <u>all</u> of KFG's tariffed rates — utility or farm-tap — include a per-month customer charge of $10.00 or more to contribute to non-gas costs.[29] Thus, the base rate in the usage charge <u>understates</u> what a customer is charged for non-gas costs.[30]

KFG also approximates from unspecified "information provided by EKM in 2021" that "the cost to run the system is approximately $1.00 to $1.50 per Mcf above gas cost."[31] This appears to be Mr. Shute's opinion, since no data or calculations are provided for this approximation. Perhaps it represents KFG's estimate at the time of variable operating costs or its own profit from managing the EKM system, but it is otherwise wildly at odds with publicly-available data of portions of EKM's 2022 operating costs and with KFG's regulated base charges to its utility and farm-tap customers. Nonetheless, from the $6.00/Mcf gap between what KFG asserts is the margin charged it by EKM and the lower approximation of EKM's per-Mcf non-gas costs (in 2021), KFG claims that its 5000 (utility?) customers are paying approximately $2.00/Mcf more "than they would be paying if EKM were a regulated utility."[32] The data and other evidence are to the contrary, that there would be no savings to KFG's customers from economic regulation of EKM as if it were a utility.

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[29] *See* KFG Farm-Tap Tariff PSC No.2, sheet no. 6 (eff. 11/1/15); KFG Distribution System Tariff PSC No.3; 36th rev'd sheet no.4 (eff. May 1, 2025).

[30] *See, e.g.,* footnote 23 and associated text above for an example of a significant increase to the base rate in a usage charge without the contribution from customer charges.

[31] KFG Brief pp. 4-5, citing Steve Shute hearing testimony [HVR 1:22:15–1:22:35].

[32] *Id* pp. 6-7, citing Steve Shute hearing testimony [HVR 1:22:45–1:24:37].

Conclusion

Unlike EKM in its initial brief,[33] Kentucky Frontier offers no analysis or suggestion to improve the current situation between EKM and KFG as to either safety or economic regulation. As proposed by EKM, a better demarcation between gathering/supply and utility services will benefit consumers and allow appropriate investment in the distinct systems going forward. Maintaining EKM's gathering exemptions from PSC regulation will protect both producers and customers in the affected counties from higher regulatory costs.

Respectfully submitted,

/s/ Jason R. Bentley

Jason R. Bentley
jbentley@mmlk.com
Katherine K. Yunker
kyunker@mcbrayerfirm.com
McBrayer PLLC
201 East Main Street; Suite 900
Lexington, KY 40507-1310
859-231-8780; fax: 859-960-2917
Counsel for East Kentucky Midstream, LLC

[33] EKM Initial Brief pp. 11-14 ("Potential Resolution Preserving Kentucky Gathering/Farm Tap Systems and Addressing Sander Report Safety Concerns").