

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Electronic INVESTIGATION OF JURIS-)
DICTIONAL STATUS OF EAST KEN-)
TUCKY MIDSTREAM, LLC, AND OF)
ITS COMPLIANCE WITH KRS CHAP-)
TER 278, 807 KAR CHAPTER 005, AND)
49 CFR PARTS 191 AND 192)

Case No.
2022-00238

East Kentucky Midstream Request to Submit Based on the Record

Comes now East Kentucky Midstream, LLC (“EKM”) by counsel and formally requests this investigation be submitted on the record. EKM has complied fully with every request in this matter. Following multiple rounds of discovery from Commission Staff, Kentucky Frontier Gas, LLC (“KFG”) and the Attorney General’s Office of Rate Intervention, and having held a formal conference in this matter on October 14, 2022, followed by post-formal conference data requests, the Commission concluded when denying KFG’s request for a formal hearing, “there is substantial evidence in the record regarding East Kentucky Midstream’s jurisdictional status and a hearing would not be in the public interest.”¹ Since that Order, the initial robust record has been supplemented with subpoenaed deposition testimony from EKM and KFG, post-deposition data requests, and an investigation and two reports from an independent consultant hired by the Commission. If the record was “robust” in December 2020,² it is now more than complete to dispense with a formal hearing.

¹ Order (PSC Dec. 20, 2022) at 3. “This is because a robust record has been developed regarding the issue before the Commission: East Kentucky Midstream’s jurisdictional status.” *Id.* at 2.

² *Id.*

KFG’s efforts to convince the Commission to regulate EKM as anything other than a gathering system are constrained by one indisputable fact: EKM’s pipeline system serves a critical gathering function for numerous natural gas producers in the region.³ Natural gas gathering is an essential and necessary extension of the production industry.⁴ As such, it is exempt from PSC regulation as a utility throughout KRS 278, with the exception of jurisdiction over the rates charged to statutorily-required “farm tap” customers and enforcement of PHMSA pipeline safety regulations.⁵

Regarding PSC jurisdictional status, EKM has a recently-approved farm tap tariff on file with the Commission as a gathering system.⁶ EKM commends Sander Resources for its investigation of the PHMSA safety classifications of various segments of the system. As initiated by the 2020 PIPES Act, recently established PHMSA regulations will continue to evolve and affect

³ “49 connections to sources of production from 467 wells operated by between 21 and 49 independent producers.” Final Report of Sander Resources, “*Regulatory Status of East Kentucky Midstream, LLC (EKM) Pipeline System*” (June 30, 2024) at 2; Sander Resources *Preliminary Report* (June 12, 2024) at 2.

⁴ “While there are thousands of natural gas wells drilled and available for production in Eastern Kentucky, many areas of Eastern Kentucky are traditionally underserved or non-served by pipe to allow that gas to flow to market ... I can’t stress the importance of a line such as this line ... This line has been used as a gathering line for years to take native East Kentucky gas to market, and it has been very important, especially in Lawrence County, Johnson County, Magoffin County areas in terms of getting that gas to market.” Formal Conference Video Recording (Ky PSC Oct. 14, 2022) Public Comments of Bill Barr, Partner, Blackridge Resource Partners; Board Member and Chair, Government Affairs Committee, Kentucky Oil & Gas Association beginning 11:45:30.

⁵ See EKM Brief (Jan. 20, 2023) for discussion of KRS 278 statutes’ repeated exclusion of gathering, PSC precedent regarding “farm tap” jurisdiction, and PSC/PHMSA safety regulation; see also EKM Response to KFG Brief (Feb. 9, 2023).

⁶ *In the Matter of: Electronic Application of East Kentucky Midstream, LLC for Approval of a Proposed Tariff Under 807 KAR 5:026, Section 9*, Order, Case No. 2023-00112 (Ky. P.S.C. May 20, 2024). The tariff, effective May 20, 2024, is appropriately found in the Commission’s on-line tariffs library under *Natural Gas > Farm Taps*.

systems like EKM. EKM looks forward to working closely with the Commission to ensure compliance and to protect the public.

In contrast, KFG is a utility in Kentucky, in that it sought out and received Commission approval to provide utility service to and for the public at Commission-approved rates that are set to allow it to recover the costs of providing service, plus a reasonable profit.⁷ KFG's sole member and owner, Steve Shute, has testified on several occasions how he "has put together a dozen small gas utilities to form a single brand with about 5000 customers" in Eastern Kentucky.⁸ Mr. Shute has also disclosed how he has acquired small utilities in multiple states and consolidated them.

This formal investigation began when KFG sought an Order declaring EKM subject to Commission regulation as a utility under Kentucky law.⁹ The impetus for this stemmed from a contract dispute over gas supply between EKM and KFG that had been narrowed down to roughly \$30,000 at issue to be worked out between the parties. In the course of that disagreement, KFG was withholding \$285,668.85 owed to EKM in past due balances.¹⁰ KFG, it also turns out, had unsuccessfully attempted to buy the system now known as EKM. The threat of regulation as a utility may have successfully strong-armed natural gas producers and suppliers in other states, but Kentucky's protections for natural gas gathering systems and producers prevent Mr. Shute from using such tactics here. Since the initial contract dispute, both parties have spent multiple times the amount in question in legal fees, and there has been no interruption

⁷ See PSC Case Nos. 2005-00348, 2008-00394, 2009-00442, 2010-0076, 2011-00443, 2015-00299, 2017-00263.

⁸ *E.g.*, Rebuttal Testimony of Steven Shute (Aug. 30, 2024) at 2.

⁹ *In the Matter of: Electronic Application of Kentucky Frontier Gas, LLC for a Declaratory Order Regarding Commission Jurisdiction*, Case No. 2022-00224, KFG Application (July 22, 2022).

¹⁰ *Id.*, Exhibit C, Letter from Jack Justice to Steve Shute of July 13, 2022.

in gas supply for KFG. The Commission should end this investigation with affirmation of EKM's status as a gathering system with Commission jurisdiction extending to regulation of farm tap rates and PHMSA compliance.

Respectfully submitted,

/s/ Jason R. Bentley

Jason R. Bentley

Kathrine K. Yunker

McBrayer PLLC

201 East Main St., Suite 900

Lexington, KY 40507

(859) 231-8780

jbentley@mmlk.com

kyunker@mcbrayerfirm.com

Counsel for East Kentucky Midstream LLC