

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

East Kentucky Midstream, LLC
Petition for Rehearing and/or to Change, Modify, or Vacate

East Kentucky Midstream, LLC (“EKM”) requests from the Public Service Commission of Kentucky (“Commission”) pursuant to KRS 278.400 and in accordance with 807 KAR 5:001 § 5 for reconsideration of its Order entered February 27, 2026 (“2/27/26 Order”) and that the Commission change, modify, or vacate the 2/27/26 Order and issue such order or orders as requested herein. Vacation, change, modification, and/or rehearing is warranted because the 2/27/26 Order contains material errors of law and fact, overlooks substantial evidence demonstrating that EKM is a gathering system and not a jurisdictional utility, and imposes regulatory obligations inconsistent with Kentucky statutes and longstanding federal and state precedent.

Introduction/Summary

This case is an investigation initiated by the Commission and incorporating a declaratory/complaint case by Kentucky Frontier Gas, LLC (“Ky. Frontier”) about the jurisdictional status of EKM and associated compliance matters. The Commission does not adequately support its determination that EKM’s jurisdictional status and terms and conditions of its gas supply service should be different from that of a gathering/ farm-tap system as previously recognized and confirmed in its authorized and approved farm-tap tariff, KY PSC No.1. The 2/27/26 Order instead

— on errors and inconsistencies of fact and law — concludes and orders that EKM is a KRS 278.504(3) local distribution company (“LDC”) and a KRS 278.010(3)(b) natural gas utility. EKM does not here catalog every defect in the 2/27/26 Order or the proceedings in this case, but instead shows that the 2/27/26 Order’s conclusions and ordering paragraphs are unsupported and gives reasons from the evidence and the law that the outcome must be different — that there should be no change in status and that modification, if any, of EKM’s terms and conditions of service on its gathering/farm-tap system be to those applicable to its larger customers now served pursuant to individualized agreements.

Apart from the errors regarding EKM’s jurisdictional status, the 2/27/26 Order neglects to make determinations on (a) the issues raised (and incorporated into this case) by Ky. Frontier’s complaints and (b) compliance/responsibility issues raised by the 7/16/24 Sander Report and that were the focus of the evidentiary, formal hearing held May 19, 2025. And the orders relating to tariff changes and reporting and other compliance duties are incorrect and incomplete even assuming *arguendo* that the conclusion of utility jurisdictional status is sustainable.

Argument

EKM here adopts and incorporates by reference the East Kentucky Midstream, LLC Post Hearing Brief submitted June 13, 2025 (“EKM Post-Hearing Brief”),¹ which analyzes the issues in this case and provides specific citations to evidence in the case record, including from the 5/19/25 formal hearing. The 2/27/26 Order never cites to the 5/19/25 hearing video record and cites the parties’ concurrent 2/20/23 briefs — filed three years before the 2/27/26 Order — more

¹ The 2/27/26 Order’s three references to this brief (*see* fns. 74, 87 & 96) are as “East Kentucky Midstream Post-Hearing Brief #2”.

than twice as often as it cites the parties' 6/12/25 post-hearing briefs. The 2/27/26 Order may be so misguided because it is based on limited and outdated information.

1. The EKM system indisputably gathers locally produced gas as the first purchaser and transports gas for resale both locally and to the interstate pipeline system.

EKM is organized and operated as a gathering or “midstream” pipeline system connected to the interstate system and serving local producers with end-users to whom it supplies gas as a consequence of KRS 278.485.² The EKM system was and is built, operated, intended, and essential to facilitating natural gas production in the region. Hundreds of producing natural gas wells in eastern Kentucky depend on EKM as a first purchaser and on its gathering system³; without EKM, dozens of producers would have no access to purchasers.⁴ Given seasonality and market fluctuations, there are times when farm-tap and other EKM customer demands exceeds the supply of producer gas, but that does negate the continuing critical function of EKM’s system for moving gas out of the producing fields. In addition, the fact that some producers may cease production for a time (due to well-specific issues or because the current market price is too low to make production worthwhile) does not interrupt the original function and continued need for EKM to be the first purchaser of Kentucky-produced natural gas and to gather and transport that gas to where it can be sold.

The 2/27/26 Order acknowledges (*e.g.*, pp.23-24) that flows and functions on the EKM system are subject to change and that there are variables that may affect aspects of the system’s

² In contrast, Ky. Frontier holds itself out as a natural gas utility, *i.e.*, for profession and dedication of service, and its financing, accounting, management, operations and rates follow a utility model.

³ See EKM Post-Hearing Brief (p.4) for numbers of companies and wells. Kentucky produced gas that flowed on the EKM system in 2025 (264 million standard cubic feet) was down from the 16-year average of 749 million scf and 10-year average of 461 million scf, indicative of the price-sensitive nature of natural gas exploration and wellhead sales.

⁴ See also Sander Report, p.4; EKM Post-Hearing Brief pp. 4 and 5; and Testimony of J. Banks at the 5/19/25 formal hearing as to the presence of production lines and wells connected throughout the EKM system.

operation; for example, the Sander Report opined that EKM could treat parts of the system in certain locations as a transmission pipeline.⁵ This raises a host of unanswered questions. If the Commission now regulates EKM as a gas distribution utility for purposes of rates and terms of service, it does so ignoring not only the volumes of producer gas on the EKM system and federal gathering designation, but also the essential gathering and transmission capabilities and functions of EKM for producers in the region.⁶ If market conditions change and production volumes increase, does EKM revert to farm-tap regulation as a gathering system? For the months of the year other than those the Commission thinks “parts of the [EKM] system are being used in a manner consistent with a natural gas distribution system” 2/27/26 Order p.22, is it to be regulated as a gathering system? And for those parts not being used consistent with a natural gas system, do they always have the status of a gathering system, or something else? If natural gas demand increases nationwide and the price of natural gas triples, are Kentucky producers going to benefit from those prices or will their production volumes be displaced by least-cost interstate pipeline gas on the high cost EKM-utility system?

The farm-tap statute, KRS 278.485, and consequent obligations and rights exist only because Kentucky has local oil and gas production and gathering facilities. A farm-tap system may not be allowed to discontinue supply to a farm-tap customer until the subject line is abandoned; however, there is no obligation to continue service without the presence of local production. Since 1984, it has been statutorily directed that Commission policy “facilitate greater utilization of the natural gas produced or available for production within the state, where this can be done

⁵ See Sander Report pp. 2 & fn.1, 5, 19, noting that applicable criteria could be met if EKM elects to self-designate the facilities as transmission pipeline for safety and compliance purposes.

⁶ See Public Comments of Kentucky Oil & Gas Association, submitted 4/4/23 in this matter: “[A] precedent for characterizing a gathering system, or a segment thereof, as a ‘utility,’ and thereby subjecting it to all of the operational and service requirements imposed on a utility could devastate Kentucky’s gas producers by making the gathering of their gas, and its movement downstream, economically unfeasible.”

without detriment to the customers of utilities....” KRS 278.507(1). This law supports the Commission’s lighter regulatory touch with regard to gathering systems and non-interference with matters directly affecting the price of natural gas in Kentucky.⁷ Now attempting to regulate EKM as a utility is an impermissible intrusion by the Commission into production and gathering of natural gas under the Natural Gas Act.⁸

2. Through its gathering system, EKM fulfills its farm-tap service obligations.

EKM’s effective, filed tariff not only is titled and categorized as one “for furnishing NATURAL GAS from FARM TAPS pursuant to KRS 278.485” in eight (8) eastern Kentucky counties,⁹ its terms and conditions unmistakably identify EKM as a gas gathering pipeline system and the service as “farm-tap service ... pursuant to KRS 278.485 and 807 KAR 5:026 §9.” EKM farm-tap Tariff, Orig. Sheet No. 2.1. The service terms and conditions are consistent only with farm-tap service; for example:

- “Gas service is not provided at any fixed or specified pressure, and the gas provided is neither treated nor artificially odorized.” *Id.*¹⁰
- The terms and conditions of the farm-tap statute and regulations (KRS 278.485 and 807 KAR 5:026) are expressly incorporated. *Id.* Orig. Sheet No. 4.1, item #1.

⁷ See Public Comments of Kentucky Oil & Gas Association, submitted 4/4/23 in this matter.

⁸ See *Public Service Comm’n of Kentucky v. Federal Energy Regulatory Comm’n*, 610 F.2d 439, 444 (6th Cir. 1979) (rejecting position that Commission, not FERC, had exclusive authority to regulate KRS 278.485 deliveries of natural gas).

⁹ EKM Natural Gas Farm-Tap Service tariff, PSC KY NO. 1 (effective May 20, 2024), Original Cover sheet; the currently-effective EKM farm-tap tariff is available from Commission records at <<https://psc.ky.gov/tariffs/Natural%20Gas/Farm%20Taps/East%20Kentucky%20Midstream,%20LLC/Tariff.pdf>> (last visited 3/18/26).

¹⁰ See also EKM farm-tap Tariff, Orig. Sheet No. 4.2, item #3.a (delivery “at the varying pressures of the applicable EKM pipeline”); *id.* item #3.b (odorization is the responsibility of the customer); *id.* Orig. Sheet No. 4.3 item 3.e (no specific quantity or quality of gas to be supplied). Compare with KRS 278.485(4) and 807 KAR 5:026 §6(12) (customer line odorization requirement).

- The property owner (not the end user or the service location occupant) must be the service customer. *Id.* item #2.a.
- EKM may discontinue, reduce, or change service to a customer based on, *e.g.*, temporary or permanent abandonment of any well on its system or discontinuance of transportation of gas in or use of compressors on any applicable pipeline, *id.* Orig. Sheet No. 4.3, item #3.d, and EKM may remove the meter and/or close the tap for any service point for other reasons, *id.* Orig. Sheet No. 4.6, item #6.e.¹¹

Nor is the service offered to or for the public, but only as limited per KRS 278.485 qualifications,¹² and the tariff allows EKM “to refuse or to defer full service to an applicant if the existing gathering pipeline system is inadequate to serve the applicant’s requirements without adversely affecting the farm-tap service to those already connected and being served.” EKM farm-tap Tariff, Orig. Sheet No. 2.2.

The EKM farm-tap Tariff was affirmatively approved by Commission by final Order issued May 20, 2024, after suspension and a full-fledged investigation in Case No. 2023-00112¹³ — all during the pendency of this case. EKM had given notice of its intent to file an application for the Tariff under 807 KAR 5:026 §9 on March 29, 2023, and filed its Application as a gas-gathering system (Application ¶3) on May 31, 2023. The Commission’s determination to

¹¹ Compare with KRS 278.485(6) (giving pipeline company the right to abandon and remove any gathering pipeline, and requiring removal of the main line as to any customer for which service was terminated for a period of six (6) months for lack of gas in the line which served that customer).

¹² Service must be provided (with conditions) “upon the request of the owner of the property on or over which any producing well or gas gathering pipeline is located or the owner of real estate whose property and point of desired service is located within one-half (1/2) air-mile of said company’s producing gas well or gas gathering pipeline.” Qualified service locations may be well over one-half air-mile of any EKM gathering pipeline if in a remote corner of a property which the gathering line crosses (as emphasized by KRS 278.485(8)) and legacy service may currently be provided to such a location even if no longer part of the property crossed by the pipeline. Neither the statute nor the regulations (807 KAR 5:026) prohibit farm-tap service to more distant locations or service lines that are more than one-half mile long.

¹³ See 8/2/23 Order, in Case No. 2023-00112, and Staff information requests and responses thereto.

approve a gas-gathering farm-tap system tariff for EKM was thoroughly considered on data about current customers, service, operations and costs. The EKM farm-tap Tariff remains valid, approved, and filed.

Ordering ¶¶ 5 & 6 of the 2/27/26 Order mandate steps relating to filing a new tariff or new tariff sheets of “rates, charges, and modifications necessary to operate as a distribution utility” without the required investigation of the existing, filed farm-tap Tariff and without any guidance about whether and how the existing tariff and the “new tariff” are to co-exist or about the real-world changes that would be necessary for EKM to offer and provide “distribution utility” service. The cost to upgrade service on the EKM system to comply with KRS 278.010(3)(b) utility standards for metering, inspections, maintenance, quality of service and safety will require a massive investment — one that would have to be paid for by EKM’s current customers. The costs of such will outweigh any benefits to current small farm tap customers, wholesale-type customers, or the customers and individual owner of Ky. Frontier.

3. The 2/27/26 Order incorrectly categorizes EKM as a utility.

EKM’s Post-Hearing Brief fully explains why it is not a jurisdictional utility, on the law and facts; therefore, having incorporated the EKM Post-Hearing Brief herein by reference, this Petition will not repeat that showing. Instead, EKM here briefly describes four significant errors in the way that the 2/27/26 Order reaches that flawed conclusion.

First, the Commission compounds the error of using a distorted version of the FERC “primary function test”¹⁴ by resting its analysis on evidence that in 2024 “all purchased gas was sold

¹⁴ The Commission acknowledges that the focus of the test is on geographic and physical factors and does not dispute that these have not changed on the EKM system. 2/27/26 Order p.15 & fn.66; *id.* p.16 & fns. 68, 69.

to customers on the system and no local production gas was moved to market,”¹⁵ and that EKM supplements producer gas with gas purchased from the interstate market to maintain service to its customers.¹⁶ These are cited for the only thing — the continuity of service on the system — that the 2/27/26 Order presents as supporting its conclusion that EKM has become a KRS 278.010(3)(b) jurisdictional utility. *See* 2/27/26 Order pp. 16-18, 20-23. Yet there is nothing inconsistent with EKM’s farm-tap tariff or its obligations and allowances under KRS 278.485 (subsection (4) or otherwise) in its continuing to supply customers on its gathering system during periods when producer gas is too low to meet all demand on the system.¹⁷ Despite an egregious mis-statement in the 2/27/26 Order (p.22), there is no guarantee of service provided to EKM’s customers; the EKM farm-tap Tariff makes explicit that there is no such guarantee.¹⁸ At the same time, nothing in KRS 278.485 requires EKM to let any end-user freeze in the dark or to forego supplying gas for end-use or resale at rates that might contribute toward fixed costs of investment, maintenance, and operation of its gathering system.

Second, the conclusion that EKM is not a KRS 278.504(1) intrastate pipeline¹⁹ is necessarily inconsistent with the conclusions that EKM is a KRS 278.504(3) LDC and therefore a jurisdictional utility.²⁰ Put side-by-side, the definitions in KRS 278.504(1) and (3) are:

¹⁵ 2/27/26 Order p.17 & fn.75. Note that the production gas did find a market in Kentucky users; the interstate market is not the only market or option for Kentucky-produced gas.

¹⁶ *Id.* pp. 17, 18.

¹⁷ Similarly, the fact that EKM supplied farm-tap customers during periods when their demand exceeded producer-gas supply when it has not completely abandoned the applicable gas-gathering system lines from which farm-tap customers are supplied is not inconsistent with its farm-tap Tariff.

¹⁸ *See* EKM farm-tap Tariff Orig. Sheet Nos. 4.3 (item #3.d) & 4.6 (item #6.e).

¹⁹ 2/27/26 Order p.12 & Ordering ¶2 (p.24).

²⁰ *Id.* pp. 15-18, 20-23 & Ordering ¶3 (p.25).

278.504(1) – Intrastate Pipeline	278.504(3) – Local Distribution Company
(A) any utility or any other person	any utility or any other person
(B)	other than an interstate pipeline or an intrastate pipeline
(C) engaged in natural gas transportation in intrastate commerce	engaged in transportation or local distribution of natural gas for ultimate consumption
(D) for compensation,	
(E) to or for another person or to or for the public,	
(F) but shall not include any part of any pipeline dedicated to storage or gathering or low-pressure distribution of natural gas.	but shall not include any part of any pipeline primarily used for storage or gathering or low-pressure distribution of natural gas.

It is insufficient that the 2/27/26 Order (p.12) finds that EKM does not transport gas “to or for another person” — in order to fail element (E) for an intrastate pipeline, the person must also not be doing so “to or for the public.” There is no parallel element for an LDC, but to be a KRS 278.010(3)(b) gas utility requires that the person act “to or for the public” without element (E)’s other alternative of acting “to or for another person.” The 2/27/26 Order (p.23) finds that EKM is an LDC²¹ and then skips to a conclusion that it is a utility without understanding that not all LDCs are utilities and a utility must act “to or for the public.” EKM’s system provides low-pressure distribution of natural gas not to or for the public but for a limited class of persons who can be its customers only if they meet statutory location and “requesting” criteria.²²

²¹ As explained in the preceding paragraph, it does so on faulty logic that because some aspect of EKM operations is “consistent with a local distribution system,” *see, e.g.,* 2/27/26 Order p.23 — without showing that it is inconsistent with being a gas-gathering, farm-tap system.

²² *See Public Service Comm'n of Kentucky v. Ky. W. Va. Gas Co.*, 531 S.W.2d 491, 493 (Ky. 1975): “[R]ead literally, the statute [KRS 278.485] requires gas companies to make that gas available (in whatever condition it is) to a special classification of customers if they want to avail themselves of it.”

Third, the 2/27/26 Order mistakenly uses categories and factors relevant to matters other than for full rate regulation, certificates of need, to construct, and to finance, or other economic regulation of gas systems to make determination about utility status. For example, KRS 278.485 may outline “a limited-service role” for gathering systems (*see* 2/27/26 Order p.22), but does so as a limited obligation consequent upon operating a gas-gathering system and with countervailing rights for the system operator to abandon or remove the serving pipeline. Furthermore, KRS 278.485 is within a part of KRS ch.278 (KRS 278.470 – .502) governing gas facilities that might not otherwise Commission-regulated and for which the Commission has authority concurrent with or limited by federal authority. Sander Report observations that the 2/27/26 Order (pp. 13-14, 19-21, 23) cites in support of its determination that EKM is an LDC utility are about PHMSA reporting and other safety-related issues (not rates-and-terms regulation) over which the Commission has authority regardless of “utility” status. Finally, the KRS 278.504 categories of pipeline entities apply to statutory provisions for Commission-required transport of natural gas (KRS 278.505–.507) “to facilitate greater utilization of the natural gas produced or available for production within the state, where this can be done without detriment to the customers of utilities...” (KRS 278.507(1)). Element (A) of the intrastate pipeline and LDC categories (see side-by-side comparison above) expressly includes “any utility or any other person,” emphasizing that the category definitions are not dependent on “utility” status.

Fourth, the KRS 278.504 definitions contemplate categorization by pipeline or segment thereof, excluding “any part of any pipeline” with a dedicated or primary use for “gathering or low-pressure distribution of natural gas.”²³ Each and every EKM pipeline from gas production

²³ See element (F) in the side-by-side comparison above. Similarly, 807 KAR 5:026 §1(5) focuses on individual lines or system segments in defining “gathering line.”

facilities and through taps on which natural gas is distributed for end use (all of which is at low pressure) qualifies for this exclusion. On the other end of the spectrum, as acknowledged in the 2/27/26 Order, p.1 fn.3: “When the Commission opened this investigation, two segments on the then Jefferson Gas system²⁴ met [the] definition” of “transmission line” under 49 C.F.R. Parts 191 and 192, for which the Commission regulates safety only.²⁵ The Sander Report notes that, in addition, EKM may self-designate certain segments of system pipeline as transmission.²⁶ Yet the 2/27/26 Order ignores these distinctions in function and its authority to regulate, sweeping EKM’s entire system into LDC utility regulation.

4. Under Kentucky EKM’s integrated pipelines are a gathering system with an incidental (at most) intrastate transmission “function.”

The preceding paragraph’s point about differences in regulation for pipelines or parts thereof suggests that there might be a distinction made in Commission regulation for the supply of natural gas to bulk customers connected to EKM’s system, like Ky. Frontier and the city of West Liberty. Although not a traditional intrastate pipeline transporting gas for a fee between seller and buyer, the EKM system arguably serves a transmission function for bulk natural gas customers, by transporting local producer gas comingled with interstate gas to customers when needed. EKM’s farm-tap Tariff already distinguishes such bulk customers and requires that they have a special contract with EKM.²⁷

²⁴ The “then Jefferson Gas system” was sold to EKM in 2021; therefore, at the time of the initiation of this case, these were segments of the EKM system.

²⁵ No identification is made of the two segments, and there is no discussion or ruling that their status has changed since the opening of this case on August 11, 2002.

²⁶ See Sander Report, pp. 2 &fn.1, 5, 19.

²⁷ EKM farm-tap Tariff, Orig. Sheet No. 2.1 (Classification): “Supply of gas to a single property owner at multiple points of service or for resale or large-volume non-residential end-use to persons otherwise qualifying for farm-tap service is conditional upon and subject to a special contract therefor between EKM and the customer.” Compare with KRS 278.506(3) requirement that gas transportation be “pursuant to a written contract between the parties setting forth specific arrangements as to volumes to be transported, points of delivery, ... and other matters relating to individual customer circumstances.”

A finding by the Commission that EKM is a gathering system with an incidental intra-state transmission function would be consistent with the Sander Report (pp. 2 & fn.1, 5, 19, 37, 40) findings regarding the function of the system with bi-directional flows in some areas and EKM's ability to self-designate certain segments as transmission. For regulation of rates arriving at an accurate cost of service-based rate may be unfeasible, due to the complexity and overlapping gathering function throughout the EKM system. EKM would, however, be willing to file with the Commission copies of supply agreements with bulk natural gas customers.²⁸ This would dovetail with EKM's farm-tap Tariff provisions.²⁹

5. The 2/27/26 Order neglects to determine the terms and conditions of natural gas and transportation service to Ky. Frontier.

Ky. Frontier's case (No. 2022-00224), incorporated into this Case No. 2022-00238,³⁰ requested declaratory relief relating to terms and conditions of its natural gas sales and transportation agreement with EKM and alleged proposed unilateral termination thereof by EKM. *See* 2/27/26 Order pp.1-4. No disposition is made of those issues, but there should be.

All gathering systems are not alike, and EKM is no exception. It is one of the oldest systems in eastern Kentucky, and most of the Ky. Frontier utility facilities on EKM are located at the far end of the system.³¹ As such, it is more expensive to operate and maintain and continue to supply Ky. Frontier customers. Those expenses were reviewed in Case No. 2023-00112 and support EKM's filed farm tap tariff. Furthermore, the prices paid by Ky. Frontier are well within

²⁸ *Cf.* KRS 278.507(4)(d) (referring to sources of information about natural gas markets).

²⁹ *See* EKM farm-tap Tariff, Original Sheet No. 2.1 (Classification), quoted in fn. 27 above.

³⁰ *See* 8/18/25 Order, Case No. 2022-00224.

³¹ L. Sander 5/19/25 Hearing Testimony (>9:12:01, <10:47:32); John White 6/19/25 Hearing Testimony (11:37:02).

the range of prices charged by other systems for gas supply.³² Even if the Commission were to review the Ky. Frontier contract under KRS 278.505(2) standards, that contractual price for gas supplied by EKM is already fair and reasonable, and allows EKM to safely and efficiently operate the system to facilitate natural gas production in eastern Kentucky counties in accordance with KRS 278.507(1) policy.

6. The 2/27/26 Order neglects to address the practical resolution about disputed areas offered by EKM to clarify responsibility between EKM and Ky. Frontier.

The Sander Report noted disputes between EKM and Ky. Frontier over responsibility for certain lines in ill-defined areas of ownership or operation.³³ The 2/27/26 Order (pp.23-24 & Ordering ¶¶4 and 8) imposes on EKM safety and compliance obligations with respect to its system, but fails to even address whether the disputed lines are part of that system.

The Sander Report identified seven areas with clusters of customers who are either Ky. Frontier farm tap or home customers³⁴ — some with EKM farm tap customers nearby. These areas as labeled as “Disputed.” To address responsibility for these disputed clusters of customer lines, EKM offered in its 6/13/25 Post-Hearing Brief (pp.13-14) to install supply meters as near as practicable to its gathering line for these communities, and at its own cost.³⁵ This proposed resolution should be ordered by the Commission because it allows the gathering functions of EKM to continue for producers while better protecting the safety of service to Ky. Frontier

³² See 11/28/22 Direct Testimony of Jack Justice, at p.5 (comparing Schute testimony that gas cost of EKM was about \$12.70/Mcf, with Paintsville Utilities gas supply costs of \$26.50/Mcf and Columbia Gas billed supply cost and delivery charge of \$15.04/Mcf). Updated comparison information is available for Ky. Frontier suppliers with each PGA filing made by Ky. Frontier; comparison across utilities, transmission providers, etc. can be done through their current tariffs on file with the Commission.

³³ See, e.g., Sander Report at pp. 25, 26, 27, 28, 38, 41 and 42.

³⁴ The seven subsystems in question are Pine Ridge, High Falls, Bear Pen Hollow, Cliftview, Simpson, Jackson Wolverine, and SW Elkatawah.

³⁵ Note, however, that if EKM is to be an LDC utility, then such costs borne by EKM will be recovered through the rates to be charged to all its customer or, because the cost is specific to serving Ky. Frontier, might be assessed solely against Ky. Frontier.

customers.³⁶ The resolution proposed by EKM in its Post-Hearing Brief would address this situation.

7. The 2/27/26 Order sets impermissible and infeasible requirements for EKM even if it is now to be a jurisdictional utility.

Even assuming *arguendo* that EKM’s status and regulation is to be changed to that of a KRS 278.010(3) utility, the 2/27/26 Order fails to set out steps for a transition to full-blown Commission regulation that is consistent with non-retroactivity principles and EKM’s vested interests and rights,³⁷ sets reasonable deadlines, and grants waivers of infeasible utility requirements.

In its Ordering ¶¶ 6-7 (p.25), the 2/27/26 Order requires EKM to “file new tariff sheets ... setting forth the rates, changes, and modifications necessary to operate as a distribution utility” by March 29, 2026, and to provide 806 KAR 5:011 prior notice to each of its customers of the new tariff. Merely as to charges to customers, it would take months to develop rates necessary to operate as an LDC utility. The greater problem, however, is with the terms and conditions of service.

As the 2/27/26 Order acknowledges in places, EKM’s physical system and its approved farm-tap Tariff do not provide for and are inconsistent with utility-grade service. For example, there are no gas treatment or processing facilities on the EKM system,³⁸ and producer gas supplied by EKM does not necessarily meet the non-farm-tap utility standards of 807 KAR 5:022

³⁶ The Commission should take administrative notice that Ky. Frontier has recently informed EKM that it will not be providing 811 locates or maintaining service lines for Ky. Frontier customers.

³⁷ See KRS 278.270 (rate adjustments are for rates “to be followed in the future”); *Cincinnati Bell Tel. Co. v. Kentucky Public Service Comm’n*, 223 S.W.3d 829, 839 (Ky. App. 2007) (per the filed-rate doctrine, approved rate cannot be altered retroactively).

³⁸ See EKM Response to 1 PSC 01 and attachments thereto. One of the key characteristics of a gathering system is the absence of natural gas processing plants. 49 C.F.R. § 192.8(b); see also Sander Report, p.4.

§§ 4-6 and 807 KAR 5:027 § 5.³⁹ It will be unable to commit in a tariff or to accomplish utility-standard gas service without obtaining KRS 278.020(1) construction certificates and installing new facilities on its system — at costs to be recovered in its rates. At the least, the Commission must provide indefinite waivers of statutory and regulation requirements to EKM for the service it would provide as a designated LDC utility, and must do so as part of any order changing EKM's status.

In addition, Ordering ¶5 (p.25) of the 2/27/26 Order impermissibly requires EKM to file an 807 KAR 5:006 §4(2) annual financial and statistical report for 2025 by the usual utility deadline of March 31, 2026. By its approved farm-tap Tariff, EKM was not a KRS 278.010(3) utility at any point during 2025. The annual financial and statistical report requirement:

- a. is applicable only to a utility (KRS 278.230(3)) and thus the financial information and statistics to be reported are only of the last ended calendar year operations of a jurisdictional utility subject to report; however, its filed tariff in effect for the entirety of 2025 was as a gas-gathering, farm tap system; and
- b. is based on information and accounting systems for utilities (KRS 278.220), which were not kept by EKM for 2025.

Therefore, EKM cannot be required to file an annual report or have other reporting obligations imposed as if it were a utility during 2025, and it lacks the practical means to do so for the information and format demanded of utilities. If EKM is to be required to make some sort of annual report for 2025, then it will need an appreciable extension of the 2/27/26 Order's deadline

³⁹ See *Public Service Comm'n of Kentucky v. Ky. W. Va. Gas Co.*, 531 S.W.2d at 493: "No provision is made by the [farm-tap] statute ... to regulate or prescribe the quality of the gas furnished and even if permitted compliance with any such regulation would be extremely difficult because the gas is furnished directly from the producing wells or gathering pipelines before it reaches the facilities of the company for cleansing impurities."

of March 31, 2026. Furthermore, reporting requirements “of a jurisdictional utility set forth in KRS Chapter 278 and 807 KAR 5:001” (Ordering ¶5), should apply only on and after such date as EKM has a certificate of convenience and necessity and a filed and approved tariff for providing utility service.

Conclusion

WHEREFORE, EKM respectfully requests that the Commission change, modify, or vacate the 2/27/26 Order to instead order that there is no change and EKM remains a gas-gathering, farm-tap system and regulated in that manner; or, in the alternative, within the general regulation of the EKM system as a gathering, farm-tap system that an incidental transmission function for bulk customers be recognized and distinguished in its regulation. EKM also respectfully requests that the Commission make determinations on the issues raised by Ky. Frontier in its complaint and by the Sander Report. Finally, EKM asks for a stay or extension of all deadlines for new tariff pages, reporting, etc. during the pendency of this petition, any ordered rehearing, or any court review of the 2/27/26 Order and, if the Commission does not change its conclusion that EKM is a jurisdictional utility, for a transitional program that does not violate EKM’s vested interests and rights, with reasonable deadlines and waivers of infeasible utility requirements.

Respectfully submitted,

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