

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 POST-HEARING RESPONSE 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 response briefs and for its post-hearing response brief respectfully states as follows:

I. INTRODUCTION

Each of the parties in this proceeding filed post-hearing briefs on June 13, 2025.

II. ARGUMENT

Kentucky Frontier incorporates its brief filed on January 20, 2023 and its reply brief filed on February 9, 2023 and its post-hearing brief filed on June 13, 2025 in this proceeding as if fully set forth herein.

1. EKM is a Distribution System and Should be Regulated by the Commission for Rates and Services

EKM continues to argue in its post-hearing brief that it is a gathering system – but also defines a gathering system as a “farm tap system”.¹ The use of the term “farm tap system” by EKM is misleading. As explained by the Commission’s expert witness, Lindsay Sander, “farm

¹ EKM Post-Hearing Brief, p. 1, (June 13, 2025). (“EKM Brief”).

tap system” is not a customary term used in the gas industry.² Lindsay Sander testified that “I’ve never heard the terminology ‘farm tap system’, ... a farm tap system is not normal nomenclature and in twenty five years of business, I’ve never heard something referred to as a ‘farm tap system’”³ “I don’t even want to even guess what ‘farm tap system’ is supposed to mean; in all honesty, I don’t even want to go there.”⁴ A true farm tap would be a tap directly on top of the main line and an individual customer’s service line would run from the main line to their house. The meter would be set at the main and any pipeline from the meter to the customer’s residence or business would be owned by the customer. Since many of the EKM farm taps are not set on the main pipelines, all lines running from the main line to customer meters are the property and responsibility of EKM. The point of custody transfer is the meter.

Kentucky Frontier’s witness Steve Shute testified at the hearing that when Kentucky Frontier purchased the former Public Gas assets from Gas Natural, Kentucky Frontier did its due diligence.⁵ Kentucky Frontier was provided addresses, GPS locations, and maps with meter points for the meters Kentucky Frontier was acquiring.⁶ There was no pipeline indicated on these maps.⁷ Mr. Shute testified that Kentucky Frontier received more information in this asset purchase than it did with other systems it acquired.⁸ EKM does not want to admit ownership of these pipelines that

² May 19, 2025 Hearing Video Record, at 0:56:20-0:56:58. (This was during confidential session, the testimony was not confidential, only the map that was presented was confidential) (“HVR”).

³ *Id.*

⁴ HVR 1:03:00-1:03:30.

⁵ HVR 3:25:00-3:28:08.

⁶ *Id.*

⁷ HVR 3:01:00-3:04:30.

⁸ HVR 3:36:00-HVR3:37:50.

are serving multiple customers off of a single tap on the main pipeline. EKM's witness Jack Banks testified at the hearing that EKM has lines coming from the main line that branch off and serve multiple customers.⁹ However, in an attempt to make Kentucky Frontier responsible for a hundred miles of pipeline that Kentucky Frontier has never had a map or indication of ownership, EKM states in its brief the following:

to address the questions raised during the hearing by KFG and the Sander report regarding responsibility for these disputed clusters of customer lines, EKM is willing to install supply meters as near as practicable to its gathering line for these communities, and at its own cost. This should ensure those clusters of KFG "farm tap" customers full rights as utility customers of KFG, and provide a clear demarcation of where EKM's gathering system ends and KFG's utility service begins.¹⁰

This is a very concerning statement. If this were to occur, Kentucky Frontier would be faced with having to maintain, repair and/or replace a hundred miles of pipelines that it currently has no knowledge of the type, condition, or location. EKM wants to park their old junk car on Frontier Street and claim it was always titled to Frontier. This would place an even larger burden on Kentucky Frontier's customers than EKM is already causing, likely raising the rates paid by all Kentucky Frontier customers by more than the \$120 per year that EKM is already causing due to its high natural gas charges. This "dispute" never arose in 10 years of daily interaction with Jefferson-EKM, until the Sander Report put some light in the dark corners. As stated by Kentucky Frontier witness Steven Shute, Frontier is "between the hammer and the anvil".¹¹

⁹ HVR 1:31:12-1:31:34.

¹⁰ EKM Brief, p. 13.

¹¹ Formal Hearing, Hearing Video Record 1:29:50 – 1:29:54, (May, 19, 2025). ("HVR").

EKM's brief contains a long argument that EKM is "functionally identical" to its predecessor Jefferson Gas and cites to several cases.¹² EKM also states that Jefferson Gas was "found to be a gathering system by both the Commission and FERC."¹³ At one point, the old Jefferson Gas system may have truly been a gathering system; however, it changed over time and has now become a distribution system. In the 1980s and 1990s, Jefferson Gas was handling natural gas that was produced by its then owners and distributing through its common ownership sister utility, Public Gas. However, that is not the case for the system that is run by EKM today. EKM witness Jack Banks testified that in the past there was enough producer gas to supply the customers but that production dwindled and now EKM purchases gas from TC Energy every day of the year.¹⁴ According to EKM's responses to post-hearing data requests, 64% of its annual natural gas supply is supplied from a FERC regulated pipeline (TC Energy) and up to 75% in peak winter times.¹⁵ Natural gas purchased from a FERC regulated company is not gathering and EKM's system now functions the same as Kentucky Frontier's system.¹⁶ As Ms. Sander explained, "Once you're taking gas from a pipeline that is a transmission pipeline, you can't revert back to gathering. So, if you're going from transmission, you can go from transmission to transmission or you can go from transmission to LDC, but you don't revert back to gathering again after that occurs."¹⁷

¹² EKM Brief pp. 8-14.

¹³ EKM Brief p. 14.

¹⁴ HVR 01:36:20-1:37:20; 1:50:00-1:51:40.

¹⁵ EKM's Response to Commission Staff's Post-Hearing Data Request, Items 3 and 5 (June 10, 2025).

¹⁶ Kentucky Frontier's Post-Hearing Brief, p. 4 (June 13, 2025). ("Kentucky Frontier Brief").

¹⁷ HVR 1:06:00-1:06:32.

Kentucky Frontier will not rehash its previously filed briefs in this proceeding. The cases cited by EKM in its brief were discussed in Kentucky Frontier's briefs filed on January 20, 2023 and February 9, 2023 in this proceeding.

EKM argues that it should be treated differently because it is an "Appalachian Gathering System". However, at the hearing in this matter the Commission's witness, Lindsay Sander testified that this is not a distinction recognized.¹⁸ Mrs. Sander testified that she is familiar with gathering systems in Kentucky and other states.¹⁹ Regarding gathering systems, she testified as follows:

The best way I can describe it is that it is a spiderweb of pipes that collects production -whether its liquids or gas although its typically gas – from producers in an area or region or production field and brings them in and consolidates that gathering into larger pipes.²⁰ **...Once you're taking gas from a pipeline that is a transmission pipeline, you can't revert back to gathering. So, if you're going from transmission, you can go from transmission to transmission or you can go from transmission to LDC, but you don't revert back to gathering again after that occurs.**²¹

Ms. Sander referred to a map and explained that there is a TC transmission pipeline, regulated by FERC, in the northwest area of the map and EKM is taking deliveries from that intrastate transmission pipeline and using it to feed gas from KZ west and KZ east and then that gas travels south to feed other pipelines in the similar region.²² It is not clear where all gas from TC Energy goes without looking at the gas consumption and production on the south side.²³ She explained

¹⁸ HVR 0:53:10-0:54:00 and 0:56:30-0:56:56.

¹⁹ HVR 0:57:30-0:57:55.

²⁰ HVR 1:00:00-1:1:30.

²¹ HVR 1:06:00-1:06:32.

²² HVR 1:07:00-1:07:30.

²³ HVR 1:07:00-1:07:50.

when you come in off of the transmission line, it is going to be transmission, but because it is not operating at transmission SMYS; EKM treated it as distribution since it is a low-pressure system.²⁴ It really looks like a transmission system due to the pressure, but it is doing distribution; so, EKM is really a distribution system.²⁵ EKM's line is not going to be a gathering line when it comes off of a transmission system.²⁶ It does not meet the definition of gathering.²⁷ There is no question that EKM has gathering on its system, but the question becomes where is the end point of gathering and Ms. Sander testified that she believes the end point of gathering is at the Hazel Green compressor station.²⁸ She explained, on this system, you have transmission and distribution on the north side when you're going south, but if you're ever have enough gas coming north, a lot of it is gathering, but it is changing the purpose of the system depending on whether they are buying gas or whether they are pushing gas north.²⁹ For FEMSA purposes, EKM can choose whether they are transmission or distribution because they are a low pressure system that is not operating above 20% of SMYS.³⁰ If they had other operational considerations that put them above 20% of SMYS, they would automatically be a transmission system.³¹ There is a different state-by-state determination for rate regulation and Ms. Sander has never seen where a gathering system would

²⁴ HVR 1:07:50-1:08:20.

²⁵ HVR 1:07:50-01:08:30.

²⁶ HVR 1:08:45-1:09:02.

²⁷ HVR 1:08:55-1:09:02.

²⁸ HVR 1:09:00-1:09:30.

²⁹ HVR 1:09:40-1:10:15.

³⁰ HVR 1:10:30-1:10:50.

³¹ HVR 1:10:30-1:10:56.

be labeled a distribution system or a distribution system would be labeled a gathering system for the purpose of rates.³²

2. EKM Should be Regulated to Prevent Price Gouging

Based on the information provided by EKM in 2021 when EKM requested Kentucky Frontier to manage the EKM system,³³ the cost to run the system is approximately \$1.00 to \$1.50 per Mcf above gas cost,³⁴ yet EKM charges \$7.00 per Mcf or more margin.³⁵ Kentucky Frontier's regulated tariff is \$4.00 per Mcf.³⁶ Kentucky Frontier receives gas from other suppliers at about fifty different locations and on average pays \$1.75 above index, with half of that going to marketing fees. The EKM charge is nearly \$7.00 above index.

EKM argues in its brief that it provides an important service to local producers.³⁷ However, local production has been cut back or halted by many producers on EKM's system.³⁸ The third largest producer on EKM's system is an entity that has common ownership with EKM.³⁹ In 2023-25, it delivered excess gas to TC Energy at Van Lear only 7 of 28 months.⁴⁰ In that same 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.⁴¹ In the winter months November to March,

³² HVR 1:11:00 – 1:11:30.

³³ EKM rescinded the request for Kentucky Frontier to operate the system.

³⁴ HVR 1:22:15-1:22:35.

³⁵ HVR 1:29:25 – 1:29:43.

³⁶ *Id.*

³⁷ EKM Brief pp. 2, 14.

³⁸ HVR 01:36:20-1:37:20; 1:50:00-1:51:40.

³⁹ Kentucky Frontier Brief, p. 5.

⁴⁰ EKM's Response to Commission Staff's Post-Hearing Data Request, Items 3 and 5 (June 10, 2025).

⁴¹ 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. Distributing FERC-regulated gas is not providing a valuable service to local producers. EKM may be providing a valuable service to some local producers, but that does not make it a gathering system and does not exempt EKM from the Commission's jurisdiction over rates and services. The fact that there are producers "does not change the classification of the system".⁴² Lindsay Sander 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.⁴³

3. There is No Confusion on how Kentucky Frontier Classifies the Former Public Gas Customers

EKM's brief states "it is unclear from the record why or how KFG considers some of the customers it acquired from Public Gas as farm taps and others utility customers."⁴⁴ Mr. Shute testified that each of the former Public Gas customers are charged the same utility customer rate; and that referring to some of the former Public Gas customers as "farm taps" was just an internal designation for customers where only a meter was acquired and are not attached to a distribution system of the former Public Gas.⁴⁵ When Public Gas was sold in 2012, Jack Banks determined which "farm tap" meters went with Public Gas and which ones were kept by Jefferson Gas.⁴⁶ As a result, there are Kentucky Frontier customers and EKM customers in the same areas.⁴⁷ When Kentucky Frontier purchased the former Public Gas assets, it only purchased the meters for these

⁴² Sander Resources Report, p.14.

⁴³ HVR 1:06:00-1:06:32.

⁴⁴ EKM Brief, p. 13.

⁴⁵ HVR 3:02:30-3:03:40; 3:10-3:11:09.

⁴⁶HVR 2:16:00-2:16:40.

⁴⁷HVR 2:16:50-2:16:10.

customers and was not provided with any maps for these customers showing any natural gas lines to be acquired.⁴⁸

4. Kentucky Frontier Did Not Initiate This Proceeding.

EKM states in its brief that Kentucky Frontier initiated this proceeding.⁴⁹ This case is a Commission initiated investigation into the jurisdictional status of EKM. Kentucky Frontier did not initiate this case. The Commission's order opening this proceeding stated the following:

The Commission on its own motion, finds that this proceeding should be initiated to investigate whether East Kentucky Midstream, LLC (East Kentucky Midstream) is selling, furnishing, or transporting natural gas to or for the public and is therefore subject to the Commission's jurisdiction as a utility under KRS 278.040. An investigation is also necessary to determine whether the pipeline owned and operated by East Kentucky Midstream should be regulated for compliance with federal pipeline safety standards pursuant to KRS 278.495(2).⁵⁰

CONCLUSION

EKM is not a gathering system. 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 should not be allowed to cause financial harm to all Kentucky Frontier customers based on its excessive charges. EKM should also not be allowed to now attempt to allocate miles of pipeline to Kentucky Frontier in an attempt to avoid Commission and PHMSA jurisdiction.

⁴⁸ HVR 1:50:00-1:51:40.

⁴⁹ EKM Brief pp. 1, 12.

⁵⁰ Commission Order, p. 1, (Aug. 11, 2022).

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 27, 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