

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

**In The Matter Of:**

<b>ELECTRONIC APPLICATION OF KENTUCKY FRONTIER GAS, LLC FOR A DECLARATORY ORDER ON FREE GAS</b>	)	<b>CASE NO. 2025-00042</b>
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**KENTUCKY FRONTIER GAS, LLC’S MEMORANDUM BRIEF AND REQUEST TO  
SUBMIT ON THE RECORD**

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Comes now Kentucky Frontier Gas, LLC (“Kentucky Frontier”), by counsel, in accordance with the Commission’s April 2, 2026 Order, and for its brief and request to submit this matter on the record, respectfully states as follows:

**PROCEDURAL HISTORY**

Kentucky Frontier filed its application seeking a declaratory order on whether certain customers were entitled to free gas on February 19, 2025.<sup>1</sup> Kentucky Frontier responded to data requests from Commission staff on November 26, 2025.<sup>2</sup> On January 27, 2026, Coty Brown, Lindsey Brown, Linda Sue Brown Allen, Ryan Allen, Kathy Howard, Ricki Carty, and Crystal Shawn Risner (“Intervenors”) were granted intervention.<sup>3</sup> The Intervenors responded to data requests from Staff and Kentucky Frontier on March 25, 2026.<sup>4</sup> The Commission entered an Order on April 2, 2026 allowing Kentucky Frontier to either request a hearing or submit the case on the

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<sup>1</sup> Application (filed February 19, 2025).

<sup>2</sup> Kentucky Frontier’s Responses to Staff’s First Request for Information (filed November 26, 2025).

<sup>3</sup> Order (January 27, 2026).

<sup>4</sup> Intervenors Responses to Staff’s First Request for Information (filed March 25, 2026); and Intervenors Responses to Kentucky Frontier’s First Request for Information (filed March 25, 2026).

record no later than April 16, 2026.<sup>5</sup> Kentucky Frontier now tenders this brief and submits this matter for a decision based on the record.

### **FACTUAL BACKGROUND**

On July 13, 2012, after being encouraged to do so by the Commission, Kentucky Frontier purchased assets of B.T.U. Gas Company, Inc. (“BTU”) from the Bankruptcy Trustee under Case No. 10-70767-TNW for the U.S. Bankruptcy Court Eastern District of Kentucky. The bankruptcy trustee conveyed to Kentucky Frontier all title and interest in the assets of BTU including customer and business records, permits, easements, rights of way, and all physical assets of the natural gas pipeline gathering and distribution systems, specifically excluding any and all debts, contracts, commitments, liabilities or other obligations, whether known or unknown, accrued or contingent on BTU.<sup>6</sup> Once Kentucky Frontier acquired BTU, Kentucky Frontier consolidated the utility rates for BTU, and other small gas utilities that Kentucky Frontier acquired, into a single rate structure.<sup>7</sup>

In addition to the utility assets of BTU, the owners of Kentucky Frontier took control of another pipeline from Fontaine-Williams Gas Gathering System, LLC (“FWGGS”). The FWGGS Pipeline is an 8-inch PE pipeline that runs about 22 miles from Sublett-Royalton area (south of Salyersville in Magoffin County) to a tie-in on the (then) Columbia P-20 pipeline just outside Martin in Floyd County (the “FWGGS Pipeline”). The intended purpose was to export Magoffin County gas from Fontaine-Williams Gas Gathering System, LLC’s drilling programs, gathered in

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<sup>5</sup> Order (April 2, 2026).

<sup>6</sup> See Bill of Sale attached to Application as Exhibit 2.

<sup>7</sup> See, *Application of Kentucky Frontier Gas, LLC for Approval of Transfer of Assets of the Former B.T.U. Gas Company and Approval of Financing and Acquisition*, Case No. 2012-00099, (Ky. P.S.C. Apr. 4, 2012); and *Application of Kentucky Frontier Gas, LLC for approval of Consolidation and Adjustment of Rates, Approval of AMR Equipment and a Certificate of Convenience and Necessity for Installation of AMR, Pipeline Replacement Program, Revision of Non-Recurring Fees and Revision of Tariffs*, Case No. 2011-00443, (Ky. P.S.C., Sept. 6, 2012).

the BTU network, to the interstate gas market and therefore, it was not a utility pipeline regulated by the Commission.

In November 2013, the FWGGS Pipeline assets were transferred to Kentucky Frontier Gas and DLR Enterprises, Inc., an intra-state pipeline entity controlled by the owners of Frontier. The northern 5.3 miles from Sublett through Royalton to Puncheon Creek was incorporated into the Frontier system. The remaining segment went to DLR. Several residents along the DLR segment to David (7.2 miles) received gas along the line, as donated by producers who wished to keep FWGGS viable. No gas has been transported on the southern 9.3 miles of the former FWGGS Pipeline since the 2013 transfer. The FWGGS entity was dissolved after the transfer of assets.

Due to winter gas shortages in Magoffin County, Kentucky Frontier would like to make the FWGGS Pipeline operational so it can provide safe and reliable service to its customers in the area. Instead of exporting Magoffin County gas, the former FWGGS Pipeline will connect to the P-20 pipeline (now TC Energy) at Martin and transport gas through David and Royalton to enhance the gas supply to Kentucky Frontier systems in Magoffin County. Once the improvements are made, the middle 7.2 miles of FWGGS Pipeline will transition from a non-regulated intrastate gathering pipeline to a certified utility pipeline under Kentucky Frontier.

The 12.5 miles of the FWGGS Pipeline from Sublett to David are supplying about 20 residences that claim they are entitled to free gas. These land owners have been receiving free gas without meters or customer status since the line's inception circa 2006. Some of these consumers claim to have received free gas in exchange for BTU easements across their property. Others have no written agreement and simply claim entitlement to free gas.

Kentucky Frontier would like to transition these consumers to utility customers of Kentucky Frontier subject to the same rates and conditions as Kentucky Frontier's other utility

customers. Therefore, Kentucky Frontier asked the Commission to enter an order declaring that agreements for free gas, if any, are null and void and Kentucky Frontier may treat any person receiving gas off of the former FWGGS Pipeline as a Kentucky Frontier customer subject to the same utility rates as outlined in Kentucky Frontier's tariff.

### **ARGUMENT**

#### **1. Allowing Consumers to Take Free Gas is in Violation of Kentucky Frontier's Tariff and KRS 278.160.**

Once a segment of the former FWGGS Pipeline is converted to a certified utility pipeline, persons taking gas off of that line are subject to Kentucky Frontier's established rates and services pursuant to KRS 278.160(2) which states:

No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for compensation greater or less than prescribed in such schedules.

An agreement to provide and receive free gas violates KRS 278.160(2) because the consumers would be taking gas at a rate less than that which is described in Kentucky Frontier's tariff. Moreover, 807 KAR 5:011 Section 13 provides, "each utility shall file a copy of each special contract that establishes rates, charges, or conditions of service not contained in its tariff." Here, no such contract was filed with the commission and the consumers on the former FWGGS Pipeline are not entitled to any rates other than what is contained in Kentucky Frontier's tariff.

A similar issue arose in *Henshaw v. Fayette County Gas Co.*, 161 A. 896 (Pa. Super 1932) in which persons granted a right of way across their farm in exchange for free gas.<sup>8</sup> Years later, the gas company gave notice that it would discontinue the service of free gas and that charges

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<sup>8</sup> *Henshaw v. Fayette County Gas Co.*, 161 A. 896, (Pa. Super. 1932).

would be assessed on an equal basis and under the same conditions applied to all other customers.<sup>9</sup>

The landowners sued to enforce their right to free gas and the court held,

The gas company is subject to the reserved power of the commonwealth to supervise and regulate the exercise of the franchise, and in the case of rates to increase or decrease them as the public interest, as distinguished from mere private interest may demand. ... this gas company was authorized to furnish and maintain service, and make and collect rates; and, in pursuance thereof, filed its schedules and existing contracts. When the rate, after printing, posting, and filing, became effective, it had the same force and effect as though it had been established by law. It is conceded that the commission's jurisdiction does not embrace all contracts, but there is no doubt that authority has been expressly given it in matters concerning rates, service, and facilities. A duty is imposed upon the commission to see that rates are not only fair and just, but equal and without discrimination. The policy of the law is to place everyone, in so far as feasible, on an equal basis ... When a rate is once established, it applies to all, and cannot be departed therefrom. The rate of the gas company applied, therefore, to the appellants, the same as to other customers, notwithstanding the existence of a written contract providing for a different rate, as the Public Service Commission Law supplants any agreement, in so far as rates are involved, between the consumer and the company.<sup>10</sup>

The same is true in this case. The Kentucky Public Service Commission has "exclusive jurisdiction over the regulation of rates and services of utilities"<sup>11</sup> The Commission has authorized Kentucky Frontier to furnish and maintain service and make and collect rates to the customers in its service territory in accordance with its existing tariff. This Commission has a duty to see that rates are fair, just and reasonable and the rates established by Kentucky Frontier should therefore be applied to the consumers on the former FWGGS Pipeline the same as any other customer.

This Commission addressed another similar issue in Case No. 2012-00028 where BTU filed for bankruptcy and Kentucky Frontier was appointed by the bankruptcy trustee to operate

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<sup>9</sup> *Henshaw v. Fayette County Gas Co.*, 161 A. 896, 897 (Pa. Super. 1932).

<sup>10</sup> *Henshaw v. Fayette County Gas Co.*, 161 A. 896, 897-98 (Pa. Super. 1932).

<sup>11</sup> KRS 278.040.

BTU.<sup>12</sup> Kentucky Frontier filed a formal complaint with the Commission regarding improper and unlawful provision of gas service to certain customers of BTU.<sup>13</sup> There were 31 customers of BTU who were receiving free gas.<sup>14</sup> The Commission found that “BTU has provided free and reduced gas to certain customers, purportedly based on an agreement or contract, without Commission approval, in violation of the laws and administrative regulations[.]”<sup>15</sup> The Commission initiated an investigation and approved a settlement agreement which stated that the customers in question “shall become and shall be served as retail distribution tariff customers of Frontier” “notwithstanding any prior agreement, contract or other commitment for service, free gas, or other special considerations[.]”<sup>16</sup> The Commission found that the settlement agreement was in accordance with the law and did not violate any regulatory principle.<sup>17</sup>

For the foregoing reasons, the consumers taking gas from the former FWGGS Pipeline cannot maintain a claim that they are entitled to free gas.<sup>18</sup> Such a claim is in direct conflict with KRS 278.160. Kentucky Frontier respectfully requests the Commission enter an order declaring

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<sup>12</sup> *Application of Kentucky Frontier Gas Company, LLC as Bankruptcy Operator of B.T.U. Gas Company, Inc. v. Harry Thompson, Thompson Energy Et. Al. and Other Unknown Entities*, Case No. 2012-00028 (Order March 12.2013).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* (Order February 3, 2012).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* (Order March 12.2013).

<sup>17</sup> *Id.*

<sup>18</sup> Intervenor’s counsel conceded that he does not expect for the Intervenor to be entitled to free gas. Intervenor filed a separate matter in in Magoffin County Circuit Court, Civil Action No. 2026 CI 0003, after asking for intervention in this matter, and asked the Magoffin Circuit Court Judge to rule on the matters that Kentucky Frontier brought before the Commission in this case. Kentucky Frontier moved to dismiss that matter arguing that the Commission has exclusive jurisdiction over the issues presented. At the hearing on that motion, counsel for the Intervenor stated, “I fully expect the Public Service Commission to rule that my clients will not get free gas for life, that’s why I went ahead and filed this action.” See Magoffin County Circuit Court Civil Action No. 26-CI-00030 February 19, 2026 Hearing video at 9:32:50-9:33:10.

that agreements for free gas, if any, are null and void and that Kentucky Frontier may treat any person receiving gas off the former FWGGS Pipeline as a Kentucky Frontier customer subject to the same utility rates as outlined in Kentucky Frontier's tariff.<sup>19</sup>

## **2. Any Alleged Easement Agreements Do Not Entitle Consumers to Free Gas.**

The easement agreements alleged by the Intervenors in this matter are red herrings. Regardless of any existing easement agreement, the Intervenors, and any other consumers, cannot be entitled to free gas because doing so would violate Kentucky Frontier's tariff and KRS 278.160 as discussed above. If the Commission decides that allowing the consumers free gas is not in violation of the tariff of KRS 278.160, the Intervenors still have not sufficiently alleged entitlement to free gas.

### **a. Ricky Carty and Crystal Shawn Risner are Not Entitled to Free Gas.**

Ricki Carty and Crystal Shawn Risner alleged that they are entitled to free gas from Kentucky Frontier because the previous owner, Edward Gilpin, executed a right of way easement agreement and was granted free gas for residential dwellings on the property. Ricky Carty and Crystal Shawn Risner submitted a copy of the easement agreement and nowhere in the easement document does it say that anyone is entitled to free gas. The easement states that it was bought "for and in consideration of one hundred dollars (\$100.00) and other good and valuable consideration." The easement makes no mention of free gas.

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<sup>19</sup> The Magoffin Circuit Court judge issued a ruling holding the circuit court matter in abeyance pending a decision by the PSC. Therefore, Kentucky Frontier requests that the Commission include in its order specifically that the Commission has exclusive jurisdiction over this matter and that the consumers on the FWGGS Pipeline, including the Intervenors, are not entitled to damages.

If Ricki Carty and Crystal Shawn Risner are somehow arguing that an oral agreement for free gas existed outside the written agreement, any such assertion, would be barred. The Kentucky Supreme Court explained:

the rule is that the writing is prima facie correct, in stating the consideration, and the burden of showing that it is not upon him who seeks to impeach it. It is regarded with favor just like other documentary evidence, and, to overcome it by parol evidence, proof should be clear and convincing.<sup>20</sup>

The Kentucky Supreme Court went on to say that a contract

must be gathered from the writing and no outside conversation, or oral statement, which is not directed to the end of impeaching a writing for fraud or mistake which took place before the writing is executed, can explain, modify, or change it; and further, when the parties reduce their contract to writing and there is no fraud or mistake in the words that express it, oral evidence is incompetent to change or modify it.<sup>21</sup>

No such allegation of fraud or mistake has been made and therefore, the easement document cannot be impeached by oral evidence. The agreement was reduced to writing, there is no allegation of fraud or mistake in the words that express it, and any oral evidence is incompetent to change or modify it. The easement agreement is prima facie correct stating that it was granted in consideration of \$100.00, not free gas.

Ricki Carty and Crystal Shawn Risner also provided a document entitled “Right of Way Easement Agreement”. This document is **not** a BTU easement agreement. It is dated July 9, 2015, which is after Kentucky Frontier purchased the assets of BTU on July 13, 2012 through bankruptcy and after BTU was dissolved.<sup>22</sup> There cannot be a BTU easement agreement created after BTU was no longer operational.

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<sup>20</sup> *Combs v. Combs*, 114 S.W. 334 (Ky. 1908).

<sup>21</sup> *Ford v. Coles*, 128 S.W.2d 609, 611 (Ky. 1939).

<sup>22</sup> See Application p. 1.

The document provided by Ricki Carty and Crystal Shawn Risner is a notice letter. It states that it was drafted by Irvin and Ethel Allen themselves (their grandparents) and it is a notice letter stating that “Fronteer Gas Co.” [sic] is in default and stating that the easement agreement will become void if they are not given free gas. In no way does this document prove that Ricki Carty or Crystal Shawn Risner are entitled to free gas or that they had an easement agreement conveying free gas.<sup>23</sup>

The easement agreement of record in Deed Book 186, Page 86 in the Magoffin County Clerk’s office states that it was granted in consideration of \$100.00, not free gas. The new document provided by Ricki Carty and Crystal Shawn Risner’s does not modify or change the written and recorded easement agreement. Ricki Carty and Crystal Shawn Risner have no basis for their assertion that they are entitled to free gas.

**b. Kathy Howard is Not Entitled to Free Gas.**

Kathy Howard’s alleges she is entitled to free gas from Kentucky Frontier because her mother, Pauline Howard, executed an easement agreement which granted her free gas. Ms. Howard did not provide a copy of the easement and instead, states that the easement is unrecorded. Without evidence in writing, such a claim is barred by the Kentucky Statute of Frauds, KRS 371.010(4), stating that any contract for the sale of real estate must be in writing and signed by the party to be charged.<sup>24</sup> Ms. Howard provided no written easement agreement and makes nothing more than an

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<sup>23</sup> It is worth noting that the numerous typographical errors contained in the new document call into question its credibility. The sentences in the document read as though someone is trying to use legal jargon but the author clearly does not understand legal jargon. For example, it states “one free tap” **after** the consideration provision and after “the undersigned” which is identified as Edward Gilpin when in fact the signatories of the document are Irvin and Ethel Allen. The document states that the “agreement is in default” when in fact an agreement cannot be in default. The *parties* to an agreement can be in default, but it is legal nonsense to say that the agreement itself is in default. The document also incorrectly identifies Kentucky Frontier Gas, LLC, calling it “Fronteer Gas Co.”.

<sup>24</sup> KRS 371.010(4); see also *Adamson v. Adamson*, 635 S.W.3d 72, 79 (Ky. 2021) citing *Goodwin v. Crider*, 6 Ky. L. Rptr. 48 (Ky. 1884) (holding the statute of frauds applies to grants of easements and right of ways).

unsubstantiated assertion. Ms. Howard presents no evidence that she is entitled to free gas from Kentucky Frontier.

**c. Coty Brown and Lindsey Brown are Not Entitled to Free Gas.**

Coty Brown and Lindsey Brown initially alleged that they are entitled to free gas from Kentucky Frontier because Coty Brown's grandparents, Ervin Allen, Jr. and Ethel Allen, were granted free gas from BTU in exchange for an easement agreement. However, the deed of conveyance to Coty Brown and Lindsey Brown is not in the same chain of title as Ervin and Ethel Allen's easement agreement. The attached easement agreement between Irvin Allen Jr. and Ethel Allen and BTU states that it encumbers the property described in Deed Book 170, Pages 342-344.<sup>25</sup> The deed to Coty Brown and Lindsey Brown, states that it conveys the property described in Deed Book 220, Page 352 in the Magoffin County Clerk's Office. These are two separate deeds. After this flaw was pointed out to the Browns in Kentucky Frontier's response to the motion to intervene, the Browns changed their story.

Coty Brown and Lindsey Brown filed supplemental information tracing their chain of title and connecting it to the easement of record in book 186, page 98 in the Magoffin County Clerk's office purporting to grant free gas in exchange for easement rights. However, such a conveyance is invalid as KRS 278.160(2) clearly states:

No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for compensation greater or less than prescribed in such schedules.

An agreement to provide and receive free gas violates KRS 278.160(2) and Kentucky Frontier's tariff for reasons discussed above. Moreover, 807 KAR 5:011 Section 13 provides, "each utility

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<sup>25</sup> The easement does not say which county these call numbers are referring to. An assumption is being made that the call numbers are referencing deeds lodged for record in Magoffin County, Kentucky.

shall file a copy of each special contract that establishes rates, charges, or conditions of service not contained in its tariff.” Here, no such contract was filed with the Commission and the Browns are not entitled to any rates other than what is contained in Kentucky Frontier’s tariff for the same reasons discussed above.

**d. Ryan Allen is Not Entitled to Free Gas.**

Ryan Allen alleges that he is entitled to free gas from Kentucky Frontier because his mother, Kathy Howard, was granted free gas in an easement agreement with BTU. Like Kathy Howard’s flawed assertions described above, Mr. Allen did not attach a copy of the easement and instead states that the easement is unrecorded. Without evidence in writing, such a claim is barred by the Kentucky Statute of Frauds, KRS371.010(4), stating that any contract for the sale of real estate must be in writing and signed by the party to be charged.<sup>26</sup> Mr. Allen provided no written easement agreement and makes nothing more than an unsubstantiated assertion. Mr. Allen presents no evidence that he is entitled to free gas from Kentucky Frontier.

**e. Linda Sue Brown Allen is Not Entitled to Free Gas.**

Ms. Allen provided a copy of the easement purporting to grant free gas. However, even if Ms. Allen’s predecessors in title did convey an easement in exchange for free gas, such a conveyance should be considered invalid by the Commission. KRS 278.160(2) clearly states:

No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for compensation greater or less than prescribed in such schedules.

Moreover, an agreement to provide and receive free gas would be in violation of KRS 278.160(2) because Ms. Allen would be taking gas at a rate less than that which is described in Kentucky

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<sup>26</sup> KRS 371.010(4); see also *Adamson v. Adamson*, 635 S.W.3d 72, 79 (Ky. 2021) citing *Goodwin v. Crider*, 6 Ky.L.Rptr. 48 (Ky. 1884) (holding the statute of frauds applies to grants of easements and right of ways).

Frontier's tariff. Moreover, 807 KAR 5:011 Section 13 provides, "each utility shall file a copy of each special contract that establishes rates, charges, or conditions of service not contained in its tariff." Here, no such contract has been filed with the commission and Ms. Brown should not be entitled to any rates other than what is contained in Kentucky Frontier's tariff for reasons discussed above.

### **CONCLUSION**

For the foregoing reasons, the consumers taking gas from the FWGGS Pipeline cannot maintain a claim that they are entitled to free gas. Such a claim is in direct conflict with KRS 278.160. Kentucky Frontier respectfully requests that this matter be submitted on the record and that the Commission enter an order declaring that agreements for free gas, if any, are null and void and that Kentucky Frontier may treat any person receiving gas off the former FWGGS Pipeline as a Kentucky Frontier customer subject to the same utility rates as outlined in Kentucky Frontier's tariff, including in the order directions to the Magoffin Circuit Court that the Intervenors' complaint should be dismissed and that the Intervenors are not entitled to damages.

This the 16th day of April 2026.

Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

This is to certify that the foregoing electronic filing was transmitted to the Commission on April 16, 2026, and that there are no parties that the Commission has excused from participation by electronic means in this proceeding. Pursuant to prior Commission Orders, no paper copies of this filing will be made.



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*Counsel for Kentucky Frontier Gas, LLC*