

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

In The Matter Of:

ELECTRONIC APPLICATION OF KENTUCKY FRONTIER GAS, LLC FOR A DECLARATORY ORDER ON FREE GAS)	CASE NO. 2025-00042
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KENTUCKY FRONTIER GAS, LLC’S MOTION TO STRIKE

Comes now Kentucky Frontier Gas, LLC (“Kentucky Frontier”), by counsel, and for its motion to strike Intervenors Response to Kentucky Frontier Gas, LLC’s Memorandum Brief and Request to Submit on the Record, respectfully states as follows:

I. Intervenors’ Response Should be Stricken for Failure to Comply with Commission Orders.

The Intervenors’ response should be stricken from the record for failure to comply with the Commission’s orders and procedural schedule set in this case. Kentucky Frontier filed its application seeking a declaratory order on whether certain customers were entitled to free gas on February 19, 2025.¹ Kentucky Frontier responded to data requests from Commission staff on November 26, 2025.² 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.³ In the Order granting intervention, the Commission modified the procedural schedule requiring the Intervenors to file a written statement within seven days of the order and for the intervenors to file responses to requests for information no later than March 18, 2026.⁴

¹ Application (filed February 19, 2025).

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

³ Order (January 27, 2026).

⁴ *Id.*

Commission Staff propounded requests for information upon the Intervenor on March 3 and 4, 2026⁵ and Kentucky Frontier propounded requests for information upon the Intervenor on March 4, 2026.⁶ The Intervenor failed to file responses to Staff's or Kentucky Frontier's requests for information in compliance with the Commission's Order. The Intervenor also failed to file a written statement within seven days in compliance with the Commission's Order. On March 24, 2026, Kentucky Frontier filed a Motion to Compel pointing out these violations.⁷ On March 25, 2026, the Intervenor filed a Motion for Leave to File Late Responses to Requests for Information.⁸ The Intervenor responded to data requests from Staff and Kentucky Frontier on March 25, 2026.⁹ The Commission granted the Intervenor's motion on April 2, 2026 and once again ordered the Intervenor to file a written statement within seven days of the Order.¹⁰ The Intervenor has, once again, failed to comply with the Commission's order and have not filed a written statement. Kentucky Frontier filed its rebuttal in compliance with the Commission's procedural schedule on April 9, 2026.¹¹ On April 16, 2026, Kentucky Frontier tendered its brief and submitted this matter for a decision based on the record in compliance with the Commission's Order.¹² Twenty eight

⁵ Staff's First Request for Information to Ricki Carty and Crystal Shawn Risner, filed March 3, 2025; Staff's First Request for Information to Kathy Howard, filed March 3, 2025; Staff's First Request for Information to Ryan Allen, filed March 3, 2026; First Request for Information to Coty Brown and Lindsey Brown, Filed March 4, 2025; and Staff's First Request for Information to Linda Sue Brown, filed March 4, 2025.

⁶ Kentucky Frontier's First Request for Information to Coty Brown, Lindsey Brown, Linda Sue Brown, Ryan Allen, Kathy Howard, Ricki Carty, and Crystal Shawn Risner, filed March 4, 2025.

⁷ Kentucky Frontier's motion to Compel, filed March 24, 2026.

⁸ Intervenor's Motion for Leave to File Late Responses, filed March 25, 2026.

⁹ Intervenor Responses to Staff's First Request for Information (filed March 25, 2026); and Intervenor Responses to Kentucky Frontier's First Request for Information (filed March 25, 2026).

¹⁰ Order (April 2, 2026).

¹¹ Kentucky Frontier's Rebuttal, filed April 16, 2026.

¹² Kentucky Frontier's Memorandum Brief and Request to Submit on the Record, filed April 16, 2026.

days later, almost a full month after Kentucky Frontier filed its motion to submit on the record, the Intervenor, without having ever filed a written statement, filed a response to Kentucky Frontier's Request to Submit on the Record.¹³ The Response did not request a hearing on this matter but rather simply requested that Kentucky Frontier's "request for a declaratory ruling and for submission of this matter on the record" be denied.¹⁴ Intervenor showed flagrant disregard for Commission orders by failing twice to file written statements, failing to timely respond to Staff's or Kentucky Frontier's data requests, and failing to either request a hearing or submit the case for a decision based on the record no later than April 16, 2026. Intervenor's "Response to Kentucky Frontier Gas, LLC's Memorandum Brief and Request to Submit on the Record" should therefore be stricken from the record and this matter should stand submitted for a decision on the record.

II. Alternatively, This Matter Should Still Stand Submitted on the Record.

Alternatively, if the Intervenor's response is not struck, because the Intervenor did not request a hearing, the matter should still be submitted on the record. In which event, Kentucky Frontier makes the following comments on the Intervenor's response:

a. KRS 278.160(2) controls.

Intervenor cite to no authority to support their supposition that "Kentucky law makes clear that such claims cannot be resolved through blanket application of tariff principles alone." If Kentucky law makes it clear, the Intervenor ought to be able to cite to a statute or caselaw supporting this position, but they do not. What is clear is that, once a segment of the former FWGGS Pipeline is converted to a certified utility pipeline, persons taking gas off of that line are

¹³ Intervenor's Response to Kentucky Frontier's Request to Submit on the Record, filed May 14, 2026.

¹⁴ *Id.*

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.

Intervenors' response states, "Kentucky law does not permit such fact-specific disputes to be resolved through categorical rules." Again, Intervenors cite to no authority for this statement, because it is preposterous. Kentucky law absolutely does permit such disputes to be resolved through categorical rules - that is why there is a statute.

b. The Commission has Exclusive Jurisdiction.

Intervenors' response then tries to challenge the Commission's jurisdiction. Kentucky Frontier is a natural gas utility as defined by KRS 278.010(3). Pursuant to KRS 278.040, the Kentucky Public Service Commission has "exclusive jurisdiction over the regulation of rates and services of utilities" "Service" as used in KRS 278.040 is defined in KRS 278.010(13) as follows:

"Service" includes any practice or requirement in any way relating to the service of any utility, including the voltage of electricity, the heat units and pressure of gas, the purity, pressure and quantity of water, and in general the quality, quantity and pressure of any commodity or product used or to be used for or in connection with the business of any utility.

Here, the Application asks this Commission to find that Kentucky Frontier does not have to honor BTU's contracts, real or imagined, for free gas. The Commission has exclusive jurisdiction over this matter as it relates directly to the service provided by Kentucky Frontier.¹⁵ In fact, the Intervenors filed an action in Magoffin Circuit Court, Civil Action No. 26-CI-00030, seeking relief and the court held that matter in abeyance pending a decision by the Commission.

¹⁵ See *Smith v. Southern Bell Telephone & Telegraph Company*, 104 S.W.2d 961,962 (Ky. 1937) (Plaintiff sought to compel the utility to furnish service in a particular manner and the court held jurisdiction rested with the PSC.).

Plaintiffs' Response misunderstands *Bulldog's Enters v. Duke Energy*, 412 S.W.3d 210 (Ky. App. 2013). In that case, Bulldog brought an action against Duke Energy alleging fraud, breach of contract, breach of the covenant of good faith and fair dealing, violations of the Kentucky Consumer Protection Act, and unjust enrichment.¹⁶ Bulldog filed a claim in state court while the matter was still pending before the Commission.¹⁷ Bulldog then filed a motion to dismiss the matter before the Commission.¹⁸ The Commission declined to dismiss the case saying that it had jurisdiction over the underlying issues.¹⁹ Duke Energy then filed a motion to dismiss the state court case for lack of subject matter jurisdiction and the case was ordered to be held in abeyance.²⁰ The Commission ultimately dismissed Bulldog's complaint before the Commission due to lack of prosecution and the state court case, no longer in abeyance, was then dismissed for lack of subject matter jurisdiction.²¹ On appeal, the Kentucky Court of Appeals explained:

The PSC has exclusive jurisdiction over the regulation of rates and services of utilities. The PSC also has original jurisdiction over complaints as to rates or service of any utility. When determining whether the PSC has exclusive jurisdiction over an issue, it is helpful to consider why the legislature chose to grant the PSC jurisdiction over this area. In *Smith v. Southern Bell Tel. & Tel. Co.*, 268 Ky. 421, 104 S.W.2d 961, 962 (1937), the former Court of Appeals explained:

The Public Service Commission is an administrative agency set up and appointed by law for the purpose of hearing the facts and establishing reasonable rules, rates, and services to the public in order to secure conformity of services and rates affecting all classes of customers, because for this burden to fall exclusively on the courts and to give the courts the primary and exclusive jurisdiction to pass upon the reasonableness of the rules, services, rates,

¹⁶ *Bulldog's Enters v. Duke Energy*, 412 S.W.3d 210, 210 (Ky. App. 2013).

¹⁷ *Id.* 211.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

schedules, practices, etc., of [utility] companies would lead to confusion and uncertainty, because the result might be that one court would say that certain rules and regulations are unreasonable, and another court might regard the same rules as reasonable; consequently, a subscriber of the same class in one locality might obtain one kind of service and the same service be denied a subscriber in another place.²²

The Court of Appeals went on to explain that allowing the Circuit Court to determine the Bulldog's claims for fraud, breach of contract, breach of the covenant of good faith and fair dealing, violations of the Kentucky Consumer Protection Act, and unjust enrichment would go against the very intent of the legislature in granting jurisdiction to the PSC and "such a result would provide a means for circumventing a determination by the PSC on issues exclusively within its jurisdiction."²³ If Bulldog wanted to dispute the PSC's findings, it could do so by bringing an administrative appeal in the Franklin Circuit Court.²⁴ The Court of Appeals affirmed the Circuit Court's dismissal of appellant's claims due to lack of subject matter jurisdiction.²⁵

Ultimately, Intervenor's claim that this matter does not belong in front of the Commission is unfounded. Intervenor cannot use breach of contract allegations regarding consideration to circumvent a determination by the PSC on issues exclusively within its jurisdiction. For example, in *Smith v. Southern Bell Telephone Telegraph Co.*, 104 S.W.2d 961, 962 (Ky. 1937) the complaint asked the state court to compel the utility to furnish service to a customer and the Kentucky Supreme Court found that the trial court lacked subject matter jurisdiction. The same is true in this case. A state court cannot compel Kentucky Frontier to provide free gas. As such, a state court

²² *Id.*

²³ *Id.* 212.

²⁴ *Id.*

²⁵ *Id.*

would lack subject matter jurisdiction and Plaintiffs' claims are subject to the exclusive jurisdiction of the Commission.

Similarly, in *PSC of Kentucky v. Brandenburg Telephone Co.*, 2015 WL 1880787*8 (Ky. Ct. App. 2015), the state court tried to order the commission to update the applicable tariff and the Kentucky Court of Appeals reversed saying the trial court had no authority to impose a duty on the PSC to amend or update a tariff. 2015 WL 1880787*8. The same applies in this case. The rates and services provided by Kentucky Frontier must be reflected in its tariff. If a state court found that the Plaintiffs were entitled to free gas, Kentucky Frontier would have to update its tariff with the commission to reflect the court's order. A state court has no authority to impose a duty to amend a regulated utility's tariff. *See Id.* Such jurisdiction lies exclusively with the Commission.

c. Parol Evidence is Inadmissible.

Intervenors argue that parol evidence should be admissible where a contract is ambiguous. This is true; however, there is no ambiguity here. The only place where parol evidence is mentioned is regarding the arguments of Ricki Carty and Crystal Shawn Risner because their allegation that they are entitled to free gas directly contradicts their easement which says the easement rights were bought in exchange for \$100.00. 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.²⁶

The Kentucky Supreme Court went on to say that a contract

²⁶ *Combs v. Combs*, 114 S.W. 334 (Ky. 1908).

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.²⁷

No such allegation of fraud, mistake, or ambiguity 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. Therefore, parol evidence is inadmissible.

d. The Statute of Frauds Bars Intervenors' Claims for Free Gas.

Several of the Intervenors failed to provide any written evidence of their claim to free gas. 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.²⁸ Intervenors' argument that the statute of frauds somehow does not apply is utter nonsense. The statute of frauds applies to easements and right of ways²⁹ and without a written document, Plaintiffs' claims that they granted easement rights in exchange for free gas are unsupported and barred by the statute of frauds.

e. This Matter Should be Submitted on the Record.

Intervenors' response states that further fact development is required; however, Intervenors failed to propound any requests for information or otherwise request a hearing within the

²⁷ *Ford v. Coles*, 128 S.W.2d 609, 611 (Ky. 1939).

²⁸ 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).

²⁹ *Id.*

timeframe permitted by the Commission's procedural schedule. This matter has been fully briefed and is ripe for a decision. For avoidance of any doubt, Kentucky Frontier incorporates by reference its memorandum brief filed with its motion to submit this matter on the record as if fully stated herein.

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 21st day of May 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 May 21, 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.

A handwritten signature in blue ink that reads "Meredith Case".

Counsel for Kentucky Frontier Gas, LLC