

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)	CASE NO.
FRONTIER GAS, LLC FOR ALTERNATIVE RATE)	2017-00263
ADJUSTMENT)	

ORDER

On December 22, 2017, the Commission issued an Order in this proceeding adjusting the base gas rates of Kentucky Frontier Gas, LLC (Kentucky Frontier). Among other things, in ordering paragraph 8, the Commission asserted that a procedural schedule would be issued to allow further limited discovery on the affiliate transaction issue. The Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention (Attorney General) raised this issue in discovery, the hearing, and briefs. The Commission declared in the Order that although the affiliate transaction issue did not affect the determination of the rates in the application, it may have an impact in future cases. On June 12, 2018, the Commission issued an Order that allowed limited discovery on this issue in order to make a determination as to whether the affiliate transaction rules contained in KRS 278.2201 to 278.2213 apply to any of the owners and companies providing services to Kentucky Frontier.

The Commission issued three data requests on the issue and the Attorney General issued two data requests. On August 9, 2018, Kentucky Frontier filed a motion for waiver of the requirements of KRS 278.2201 to 278.2213. Under KRS 278.2219, a utility may request a waiver or deviation from the requirements of KRS 278.2201 to 278.2213.

On June 8, 2021, Kentucky Frontier renewed its motion to dismiss.¹ In its motion, Kentucky Frontier points out that in the intervening time several significant changes have occurred in the ownership of Kentucky Frontier. In Case No. 2019-00018,² Steve Shute, the managing member of Kentucky Frontier, acquired Larry Rich's 13.6 percent ownership interest in Kentucky Frontier. In Case No. 2020-00241,³ Mr. Shute acquired Robert Oxford's 20 percent ownership interest of Kentucky Frontier and Industrial Gas Services, Inc. (IGS) 6 percent ownership interest. At the conclusion of these transactions, as of December 9, 2020, Mr. Shute owns 100 percent of Kentucky Frontier, which owns 100 percent of Auxier Gas. Kentucky Frontier asserts that as a result of Mr. Shute's current ownership of 100 percent of Kentucky Frontier and Auxier Gas, neither Mr. Rich, Mr. Oxford, IGS, nor any other related entity has the ability, individually or collectively, to influence or control the business decisions of Kentucky Frontier. Further, Kentucky Frontier maintains there are no longer any actual or potential affiliate transactions among the parties involved in this case. Therefore, Kentucky Frontier argues the issue, as it relates to the facts in the record of this case, has become moot.

The affiliates that caused concern for the Attorney General and the Commission are Pipeline Solutions Inc. (PSI), Pinedale Natural Gas Co. (Pinedale), IGS, and DLR Enterprises, Inc. (DLR).⁴ The concern had its nexus in the common ownership, and thus

¹ Motion to Dismiss.

² Case No. 2019-00018, *Joint Application of Kentucky Frontier Gas, LLC and Its Individual Members Steven Shute, Larry Rich, Robert Oxford and IGS, Inc. for Approval of Transfer of Ownership of Larry Rich's Interest to Steven Shute* (Ky. PSC Mar. 6, 2019).

³ Case No. 2020- 00241, *Electronic Application of Kentucky Frontier Gas, LLC for Approval of Transfer of Ownership Interests* (Ky. PSC Nov. 25, 2020).

⁴ Attorney General's Post Hearing Brief at 2–3.

common control of these entities and Kentucky Frontier. IGS is owned by Robert Oxford.⁵ The Commission agrees that the change in ownership of Kentucky Frontier eliminated the potential for applicability of the affiliate transaction rules to the relationship between Kentucky Frontier and IGS because the entities are no longer affiliates as defined by KRS 278.010(18).⁶ IGS is controlled by Robert Oxford and Mr. Shute has no ownership in this corporation. Because there is no longer any potential control of Kentucky Frontier by IGS or Robert Oxford as defined by KRS 278.010(19),⁷ the Commission finds that the motion to dismiss should be granted as to IGS.

The sole owner of Kentucky Frontier is now Steve Shute. Steve Shute also owns PSI and Pinedale.⁸ Therefore, these entities are under common control and are affiliates as defined in KRS 278.010(18). For this reason, the Commission finds that the affiliate transaction rules apply to any business transaction between Pinedale or PSI and Kentucky Frontier. Kentucky Frontier has consistently asserted that the fees charged by PSI and Pinedale to Kentucky Frontier are below market rate for such services, and that should eliminate any concern about the reasonableness of the fees.⁹ Also, the Attorney General did not seek disallowance of any costs associated with PSI or Pinedale in this rate case, nor did the Commission order disallowance of any cost associated PSI or

⁵ Kentucky Frontier's Response to Commission Staff's First Request for Information, Part I (Response to Staff's First Request)(filed Aug. 11, 2017), Item 12.

⁶ KRS 278.010(18) defines an affiliate as, "a person that controls or that is controlled by, or is under common control with, a utility"

⁷ KRS 278.010(19) defines control as, "the power to direct the management or policies of a person through ownership, by contract, or otherwise"

⁸ Response to Staff's First Request (filed Aug. 11, 2017), Part I, Item 12.

⁹ Kentucky Frontier's Response to Staff's Sixth Request for Information (Response to Staff's Sixth Request) (filed Aug. 9, 2018). Item 5(b) and 5(c).

Pinedale.¹⁰ For these reasons, the Commission finds the motion to dismiss, as it pertains to PSI and Pinedale, should be denied. However, the Commission will grant a waiver of the affiliate transaction rules as it pertains to these two companies for transactions occurring before the date of issue of this Order. The Commission reminds Kentucky Frontier and Mr. Shute that the affiliate transaction rules, including KRS 278.2207, applies to all current and future transactions between Kentucky Frontier and PSI or Pinedale. Kentucky Frontier may apply for a deviation or waiver of the affiliate transaction rules for any particular transaction or class of transactions as articulated in KRS 278.2207(2).

At the beginning of this investigation DLR was owned by Steve Shute, Robert Oxford, Larry Rich, and IGS.¹¹ In its motion to dismiss Kentucky Frontier states DLR is now owned by Steve Shute.¹² Since DLR and Kentucky Frontier share common ownership, the Commission finds that DLR is an affiliate of Kentucky Frontier as defined by KRS 278.010(18). DLR provides gas transportation service to Kentucky Frontier. Pursuant to KRS 278.274, the reasonableness of these charges is analyzed by the Commission in Kentucky Frontier's Purchased Gas Adjustment filings. For these reasons, the Commission finds that the motion to dismiss, as it pertains to DLR should be granted.

IT IS THEREFORE ORDERED that:

1. Kentucky Frontier's motion to dismiss is granted in part and denied in part.
2. Kentucky Frontier's motion to dismiss as it pertains to IGS is granted.

¹⁰ Order (Ky. PSC Dec. 22, 2017) at 4.

¹¹ Attorney General's Post Hearing Brief at 2-3.

¹² Motion to Dismiss at 2.

3. Kentucky Frontier's motion to dismiss and find that Pinedale, PSI, and DLR are not affiliates as defined by KRS 278.010(18) is denied.

4. Kentucky Frontier's motion for a waiver under KRS 278.2219 as it pertains to past transactions involving Pinedale, PSI and DLR is granted.

5. Kentucky Frontier may seek a deviation or waiver of a particular transaction or class of transactions involving Pinedale or PSI under KRS 278.2207(2).

6. The Commission shall continue to analyze the transportation fees charged to Kentucky Frontier by DLR under KRS 278.274.

7. The case is closed and removed from the Commission's docket.

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By the Commission

Vice Chairman Kent A. Chandler did not participate in the deliberations or decision concerning this case.



ATTEST:


Executive Director

Case No. 2017-00263

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