

to dismiss on September 24, 2018, and Peoples filed a reply in further support of its motion on October 1, 2018.

On December 14, 2018, Commission Staff (Staff) served its initial request for information on Peoples to which Peoples filed its response on December 28, 2018. On April 18, 2019, the Commission entered an Order finding that unless any party required additional opportunity to present argument or evidence, this matter should stand submitted for decision. The Commission directed the parties to present any comments or request for hearing within ten days of the date of the Order. On April 26, 2019, Peoples filed a response to the Commission's Order, and on April 28, 2019, Johnson filed her response. Both parties submitted comments on the issues raised in the complaint and concurred that this matter should be submitted for decision based on the record.

BACKGROUND

Peoples is a Kentucky limited liability company that provides retail natural gas service to 3,083 customers¹ located in eastern Kentucky through taps on natural gas gathering pipelines. At the time Johnson filed her complaint, Peoples provided retail natural gas service to Johnson's home located at 15 C Loren Way, Garner, in Knott County, Kentucky.²

Peoples was formed in 2013 as part of a multiparty transaction by which PNG Companies, LLC (PNG) acquired ownership and control of the assets of Equitable Gas

¹ Defendant Peoples Gas KY LLC's Answers to Commission Staff's Initial Request for Information (Peoples' Response to DR1), at Response to Question 3.

² Formal Complaint of Georgia Johnson (Complaint), at ¶ 3; Peoples Gas KY LLC's Answer (Answer), at ¶ 3. According to Peoples, Loran Rice (Rice) was the customer of record for this address, and bills for natural gas service to the property were sent to Rice in care of Johnson. Answer at ¶ 5.

Company, LLC (Equitable), including assets in Kentucky used by Equitable to provide retail gas service to approximately 3,300 customers in eastern Kentucky from taps along a gathering system formerly operated by the Kentucky West Virginia Gas Company (Kentucky West Virginia).³ Equitable acquired its retail operations in Kentucky in 1958 from Kentucky West Virginia, its wholly owned subsidiary, in a transaction approved by the Commission in Case No. 3563.⁴

Upon closing of the PNG transaction, Equitable's Kentucky assets were contributed to the newly formed Peoples. Those assets consisted primarily of a gas supply contract with EQT Energy, LLC (EQT Energy) contracts with Equitable's customers, and customer meters.

Since the transfer of these assets, Peoples has provided retail gas service to the former customers of Equitable with taps on the Kentucky West Virginia gathering system. As was the case with Equitable, Peoples does not own the wells from which the gas it supplies to its customers is produced, nor does it own the gathering lines to which its customers are connected.

Peoples provides retail natural gas service in Kentucky pursuant to a tariff on file with the Commission. Peoples' tariff states that the point of delivery for its gas service is

³ In April of 2009, a gas production company affiliated with Equitable, EQT Gathering, LLC, adopted Kentucky West Virginia Gas as an assumed name. The term of the assumed name was not renewed, and pursuant to KRS 365.15(4), registration of the assumed name expired in April of 2014.

⁴ Case No. 3563, Joint Application of Kentucky West Virginia Gas Company and Equitable Gas Company for a Certificate of Public Convenience and Necessity Authorizing the Former to Transfer its Retail Domestic Customers to the Latter; and Application by Equitable Gas Company for Disclaimer of Jurisdiction Over or In the Alternative for Approval of the Issuance of Securities (Ky. PSC Dec. 1, 1958). The final order in Case No. 3563 is not posted on the Commission's website. A microfiche copy of the order as well as the case file is available for inspection during regular business hours at the office of the Commission, located at 211 Sower Boulevard in Frankfort, Kentucky.

“[a]t connection along Kentucky West Virginia Gas Company’s well connection and gathering system in Eastern Kentucky.”⁵ The tariff further states:

Gas delivered pursuant to this tariff is from pipelines owned and operated by Peoples Gas KY LLC's supplier and all gas sold hereunder is made available by said supplier. . . . Peoples Gas KY LLC shall have the right to abandon gas service to any customer served from any line which is no longer operated by its supplier for any reason is no longer operated by its supplier for any reason whatsoever. . . .⁶

At the time Johnson filed her complaint, Peoples purchased the gas it furnished to Johnson from EQT Production Company (EQT), the operator of the Kentucky West Virginia gathering system. The gas furnished to Johnson was produced by wells connected to the system.⁷ On July 18, 2018, Diversified Gas and Oil PLC (Diversified) purchased EQT Production’s producing gas wells and gathering lines in Kentucky and became Peoples’ sole supplier of natural gas.⁸

On April 23, 2018, EQT notified Peoples that on or around September 1, 2018, it would be discontinuing the supply of gas to the pipeline that serves Johnson’s property, the WL745472 pipeline.⁹ By letter dated May 16, 2018, Peoples gave notice that EQT would be terminating the supply of gas to the pipeline on or around September 1, 2018, and that once EQT did so, Peoples could no longer deliver natural gas to Johnson’s

⁵ Tariff, Sheet No. 2.

⁶ Tariff, Sheet No. 2.

⁷ Formal Complaint of Georgia Johnson (Complaint), at ¶ 3; Peoples Gas KY LLC’s Answer (Answer), at ¶ 3.

⁸ Peoples’ Response to DR1, at Response to Question 2.

⁹ Complaint, at ¶ 4; Answer, at ¶ 4.

home.¹⁰ According to Peoples, Diversified abandoned the gathering line serving Johnson's home in early October 2019 following its acquisition of EQT's producing assets in Kentucky, after which there was no gas available for Peoples to supply Johnson.¹¹

DISCUSSION

Pursuant to KRS 278.040(2), the Commission has exclusive jurisdiction over the regulation of rates and services of all utilities in the state, including natural gas distribution companies. This authority includes original jurisdiction over complaints as to rates or service of any utility.¹²

The Commission also has limited jurisdiction to regulate the retail rates of gas pipeline companies that do not meet the definition of utility but provide limited retail gas service pursuant to KRS 278.485. This statute requires every company obtaining natural gas from producing wells located within the state to furnish retail gas service to owners of property located within one-half air mile of one of the company's well or gathering line by direct tap, known as a farm tap, on the operator's piping. A gas producer or gathering line operator that provides only farm tap service is not a utility because service is not furnished to the public but is restricted to owners of property in close proximity to the production or gathering facilities.

A gas distribution utility is subject to much more comprehensive service obligations than the operator of a farm tap system. A farm tap operator is not required to provide any

¹⁰ *Id.*, at ¶ 5. As noted *infra* at fn. 2, Peoples contends that Rice was the customer of record for this address, and that account related correspondence was sent to Rice in care of Johnson.

¹¹ Peoples' Response to DR1, at Response to Question 2.

¹² KRS 278.260(1).

minimum level of service, whereas every utility has a statutory obligation to furnish “adequate, efficient and reasonable service.”¹³ KRS 278.010(14) defines “adequate service” in part as maintaining sufficient facilities to assure customers of “reasonable continuity of service.” A farm tap system operator that furnishes gas pursuant to KRS 278.485 has no such duty to maintain continuity of service. A farm tap system operator has the right to abandon any gas well or gathering line and to terminate service to any customer connected to and served by the abandoned well or gathering line.¹⁴

Johnson’s claim that Peoples has a duty to maintain continuity of service to her is premised on her allegation that Peoples is a utility. KRS 278.010(3)(b) in pertinent part defines “utility” as:

[A]ny person . . . who owns, controls, operates, or manages any facility used or to be used for or in connection with: . . . (b) The production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of the same, to or for the public, for compensation, for light, heat, power, or other uses.

KRS 278.010(11) defines “facility” as “all property, means, and instrumentalities owned, operated, leased, licensed, used, furnished, or supplied for, by, or in connection with the business of any utility.”

Johnson asserts that Peoples meets the definition of “utility” based on the fact that it owns facilities—gas meters, service taps, saddles, and first service shut-off valves—that it uses for or in connection with its furnishing of natural gas to its customers for

¹³ KRS 278.030(2).

¹⁴ KRS 278.485(6).

compensation.¹⁵ Johnson argues that KRS 278.485 is not applicable to Peoples' provision of retail gas service because Peoples does not own the wells producing the gas it supplies to its customers or the gas gathering lines its customers tap into.¹⁶

Peoples does not dispute that it owns and maintains facilities used to furnish gas service to customers for compensation. Peoples argues, however, that it is not a utility but is instead an operator of a farm tap system and has been recognized as such by the Commission.¹⁷ Peoples asserts that it furnishes gas service only to those property owners entitled to receive such service pursuant to KRS 278.485,¹⁸ and that its tariff expressly authorizes it to terminate service to any customer served from a line that is no longer being operated by its gas supplier.¹⁹

The Commission on four prior occasions has addressed the jurisdictional status of the retail sale of gas from farm taps on the Kentucky West Virginia gathering system by a company that does not own either the gathering lines or the producing wells connected to them.²⁰ Prior to 1958, Kentucky West Virginia operated the gathering system and was a producer and a wholesaler of natural gas with limited retail farm tap sales. In 1958, Kentucky West Virginia and Equitable filed a joint application with the Commission

¹⁵ Complaint at ¶ 8.

¹⁶ *Id.* at ¶ 12.

¹⁷ Answer, at Fifth Affirmative Defense.

¹⁸ Peoples' Motion to Dismiss, at 11; Peoples' Response to DR, at Response to Questions 4 and 5.

¹⁹ Answer, at Third Affirmative Defense.

²⁰ The Commission notes that there was no party to any of these cases that advocated for the interests of farm tap customers.

seeking authorization for Kentucky West Virginia, a wholly owned subsidiary of Equitable, to transfer all of its “present and future retail domestic customers” to Equitable, as well as the assets of Kentucky West Virginia “used exclusively to serve the customers proposed to be transferred.” The application also sought on behalf Equitable a disclaimer of Commission jurisdiction over it or, in the alternative, approval for Equitable to issue securities.²¹

In their joint application, Kentucky West Virginia and Equitable stated that in 1957, only 0.85 percent of Kentucky West Virginia’s gas sales were to domestic retail customers, and that as of December 31, 1957, Kentucky West Virginia was providing service to a total of 1,975 retail domestic customers. Of these 1,975 customers, only 240 received retail service from Kentucky West Virginia pursuant to KRS 278.485.²²

By Order dated December 1, 1958, the Commission approved the joint application and authorized Kentucky West Virginia to transfer all of retail gas customers in Kentucky to Equitable. The Commission in its Order held that upon approval of the application, “Equitable will become a public utility in the Commonwealth of Kentucky.” The Commission found the proposed transaction to be in the public interest, and granted Kentucky West Virginia and Equitable a certificate of public convenience and necessity (CPCN) authorizing Kentucky West Virginia to transfer its retail gas customers in Kentucky and the assets used exclusively to serve them to Equitable. The Commission also granted Equitable a CPCN to operate as a public utility in Kentucky and to issue

²¹ Case No. 3563, at 1-2.

²² *Id.* (Joint Application, at 2).

securities. There was no reference to KRS 278.485 in the final Order approving the transfer.

In 1992, the Commission initiated an investigation into the jurisdictional status of Equitable. The Commission framed the issue as whether Equitable “should continue to be considered a supplier of “farm tap service.”²³ The Commission noted that Equitable served 4,296 customers in eastern Kentucky by taps directly off Kentucky West Virginia’s gathering system. Other than the gas meters and meter installations, Equitable had no gas distribution facilities. Equitable purchased gas from Kentucky West Virginia at each metering point and immediately resold the gas to its retail customer. The Commission stated that Equitable “functions primarily as the distribution agent” for Kentucky West.

Equitable provided what the Commission characterized as “limited service.” As set forth in Equitable’s tariff, service was limited to “rural service connections in close proximity to Kentucky West Virginia’s gathering lines . . . and related facilities,” and was subject to discontinuance if the line or well from which a customer received service was abandoned. Additionally, the customers were responsible for constructing and maintaining the service lines and regulators. The Commission noted:

KRS 278.458 and . . . 807 KAR 5:026 permit such limited service in the case of “farm tap service.” These provisions, however, apply only to the owners of producing gas wells or gas gathering pipelines. Equitable Gas has neither.

Notwithstanding the fact that it did not own any gathering lines or producing wells, Equitable argued that the Commission, in Case No. 3563, had authorized it to provide

²³ Case No. 92-168, An Investigation into Equitable Gas Company’s Status as a Provider of Farm Tap Service (Ky. PSC Feb. 8, 1993).

farm tap service when it approved Kentucky West Virginia's transfer of its retail customers in Kentucky to Equitable. Specifically, Equitable argued that the order in Case No. 3563 "authorize[d] it to provide the service which Kentucky West Virginia would have been required to provide" pursuant to KRS 278.485 but for the transfer.

The Commission ultimately closed its investigation. The Commission held that Equitable's provision of retail gas service was "authorized and consistent with the Commission's prior Order." The Commission did not cite KRS 278.485 in support of its findings, but did recognize Equitable's "status as a farm tap service provider."

The Commission again had occasion to consider the jurisdictional status of the retail service provided by Equitable in Case No 2013-00163.²⁴ PNG Companies LLC, Peoples Natural Gas Company LLC, EQT Corporation, Distribution Holdco, LLC and Equitable filed a joint application seeking Commission approval of the transfer of ownership and control of Equitable to Peoples. Unlike Kentucky West Virginia's transfer of its gathering system customers to its parent company Equitable, this proposed transaction would transfer farm tap operations to an entity unaffiliated with the operator of the gathering system.

The Commission noted that Equitable's provision of retail gas service in Kentucky had not changed in structure or operation since the Commission's investigation in Case No. 92-168:

As in 1993, Equitable does not serve any customers it is not required to serve pursuant to KRS 278.485, and its Kentucky customers are still sold and delivered gas along Kentucky

²⁴ Case No. 2013-00163, Joint Application of PNG Companies LLC, Peoples Natural Gas Company LLC, EQT Corporation, Distribution Holdco, LLC and Equitable Gas Company, LLC for Approval of Acquisition of Ownership and Control of Equitable Gas Company, LLC (Sept. 3, 2013).

West's well connection and gathering system in eastern Kentucky. The gas that Equitable delivers to its Kentucky customers, as was the case in 1993, is not its own production but is purchased from third-party suppliers through EQT Energy.

Based on its finding that Equitable's status as a farm tap company "ha[d] not changed in its structure or operation," the Commission held that the proposed transfer of its assets to Peoples did not require Commission approval under KRS 278.020(5) or (6).

The Commission recently affirmed this ruling in Case No. 2018-00369, in which the Commission approved Aqua American, Inc.'s acquisition of indirect control of Peoples and Delta Natural Gas Company, Inc. a gas distribution utility in Kentucky.²⁵ The Commission stated that "[a]s a farm tap system, Peoples is not a utility as defined in KRS 278.010(3)."²⁶ Commission approval was therefore not required by KRS 278.020 for the transfer of indirect ownership of Peoples.²⁷

Johnson argues that the Commission's decision in Case No. 2013-00163, and by extension Case No. 2018-00103, that the system operated by Peoples is a farm tap operator and not a utility was in error and in conflict with the Commission's ruling in Case No. 1999-00130. Johnson asserts that in this case, the Commission found that an operator of a pipeline, Gas Group, Inc. (Gas Group) that provided "farm tap" service to 50

²⁵ Case No. 2018-00369, Electronic Joint Application of Aqua America, Inc., SteelRiver Infrastructure Fund North America LP, SteelRiver LDC Investments LP, LDC Parent LLC, LDC Funding LLC, LDC Holdings LLC (Holdings), PNG Companies LLC (PNG), Peoples Gas KY LLC, and Delta Natural Gas Company, Inc. for Approval of an Acquisition of Ownership and Control of PHG Companies LLC and Delta Natural Gas Company, Inc. (Ky. PSC Mar. 13, 2019) at 3.

²⁶ *Id.*, at 3.

²⁷ *Id.*

customers along the route of its pipeline was a utility notwithstanding that Gas Group had originally been obligated by KRS 278.485 to provide the service.²⁸

Johnson's reliance on Case No. 1999-00130 is misplaced. The pipeline at issue had been installed and functioned as a gas gathering line transporting gas from producing wells to a connecting pipeline operated by Midwestern Pipeline, Inc. (Midwestern). As the operator of a gas gathering system (Pollitt System), Gas Group was obligated under KRS 278.485 to furnish farm tap service to owners of property located within one-half air mile of the system. But when Commission Staff conducted an inspection of the Pollitt System in 1999, the pipeline was no longer transporting gas from the wells to Midwestern. Instead, Gas Group was operating the pipeline solely to distribute its gas at retail to the farm tap customers.

The classification of a gas pipeline is determined by its primary function and can change if use of the pipeline changes.²⁹ Based on the change in the character and function of the line from a gathering line to a distribution line, the Commission held that Gas Group was no longer operating within the parameters of KRS 278.485 but instead was operating a gas distribution utility within the meaning of KRS 278.010(3)(b). The Commission did not hold that every operator of a farm tap system under KRS 278.485 is

²⁸ In 2001, the Commission filed suit in the Franklin Circuit Court to enforce its order in Case No. 1999-00130. The circuit court granted summary judgment in favor of the Commission, which judgment was affirmed by the Court of Appeals in an unpublished decision. *See Basil C. Pollitt and The Gas Group, Inc. v. Commonwealth of Kentucky, Public Service Commission*, No. 2004-CA-001516-MR, 2005 WL 2573987 (Ky. Ct. App. 2005).

²⁹ Case No. 2017-00120, Pollitt Enterprises, Inc., Whitney Clark Pollitt, individually, Amanda Deeann Pollitt, individually, and Basil Pollitt, individually d/b/a the Gas Group, Inc., a/k/a The Gas Group – Alleged Violations of KRS 278.020, KRS 278.160, KRS 278.140, AND 807 KAR 5:006, Section 4(2) (Ky. PSC, Dec. 27, 2017), at 11-12.

a distribution utility. Rather it held that as then configured, the Pollitt System was not operating pursuant to KRS 278.485 because the pipeline serving the customers was not a gas gathering line.

In Case No. 2017-00120, the Commission again considered the classification of the service provided by the Pollitt System following an inspection of the system that identified multiple violations of pipeline safety standards.³⁰ The Commission determined that, based on the function of the pipeline, the Pollitt System was still being operated as a distribution utility. The Commission recognized, however, that if the use of the pipeline changed and the line was used to transport gas from the wells to a downstream pipeline, the system could be reclassified as a gathering system.³¹

This in fact occurred when the operator of the Pollitt System entered into an agreement to transport gas from another producer through the system to an interconnect with a downstream pipeline, at which point the Commission recognized the Pollitt System as a gathering system with a comingling gathering function. The Commission recognized that as an operator of a gathering system, Pollitt is not a gas distribution utility, and its retail farm tap service is subject only to the Commission's more limited jurisdiction under KRS 278.485.³²

³⁰ At this point, Gas Group had been administratively dissolved, and Basil and Clark Pollitt were operating the Pollitt System under the corporate names of Gas Group and another dissolved corporation, Pollitt Enterprises, Inc.

³¹ Case No. 2017-00120, at 13-14.

³² Case No. 2018-00103, Basil Pollitt, d/b/a the Gas Group, Incorporated and Pollitt Enterprises, Inc., and Clark Pollitt – Alleged Failure to Comply with KRS 278.495, 807 KAR 5:022 and 49 C.F.R. Part 192 (Ky. PSC, June 11, 2019), at 1-2.

To review, prior to 1958, Kentucky West Virginia provided retail gas service to customers from taps directly off its gathering system, including some customers who received service pursuant to KRS 278.485. In 1958, the Commission authorized Kentucky West Virginia to transfer its retail customers to Equitable and granted Equitable a CPCN to operate as a public utility in Kentucky. By 1992, however, the Commission characterized Equitable as a supplier of farm tap service that was not subject to the more extensive service requirements applicable to gas utilities. In 2013 and 2019, the Commission again found that retail service provided directly off the Kentucky West Virginia gathering system was farm tap service, not a utility service, holding that no CPCN was needed to transfer ownership or control of the farm tap operator (Case No. 2018-00369) or its assets (Case No. 2013-00163).

FINDINGS

Based on its review of the character of the service provided by Peoples and its predecessor-in-interest, the Commission finds that Peoples is not a utility within the meaning of KRS 278.010(3) and therefore has no statutory duty to maintain continuity of service to its customers. Peoples does not furnish retail gas service “to or for the public,” but rather provides service to a limited class of persons who, based on proximity to production facilities, are entitled to gas service pursuant to KRS 278.485.

It is well settled that utility service that is limited to a defined, privileged class of persons is not service to or for the public.³³ In such case, the provider is not holding itself out as willing to serve, up to the extent of the capacity of its facilities, all who desire

³³ Case No. 2018-00372, In the Matter of: Electronic Investigation of Commission Jurisdiction over Electric Vehicle Charging Stations (Ky. PSC June 14, 2019), at 9.

service. For example, the Commission has found that an entity that provides sewer service exclusively to the tenants in a mobile home park did not provide service to or for the public because the entity intended to serve a limited class defined by the relationship of landlord and tenant.³⁴ Similarly, the Commission found that an entity providing sewer service only to members of a neighborhood association did not provide sewer service to or for the public. The neighborhood association was composed of all of the property owners within a geographically defined neighborhood, and the entity intended to serve only owners of property within the boundary of the neighborhood.³⁵

As noted previously in this Order, the Commission in Case No. 2013-00163 considered the jurisdictional status of Equitable's facilities in connection with the transfer of its assets to Peoples. The Commission held that a gas pipeline company providing gas service exclusively to customers entitled to receive such service under KRS 278.485 is not a utility "because it has not dedicated its facilities to serve the public up to the extent of its capacity. Rather, such a company is providing gas service only to those within one-half mile of a producing well or gas gathering pipeline."³⁶ Because Equitable was providing service only to customers entitled to receive service under KRS 278.485, the Commission found that Equitable was not a utility. The Commission reached this

³⁴ Case No. 90-169, Application of Metropolitan Sew District for Approval to Acquire and Operate the Fairhaven Mobile Home Village Sewage Treatment Plant (Ky. PSC June 22, 1990).

³⁵ Case No. 93-315, Application of Verna Hills Neighborhood Association, Inc. for an Order Authorizing Verna Hills Ltd. to Transfer Its Assets to Applicant and for determination of Jurisdictional Status (Ky. PSC Sept. 16, 1993). See also, Case No. 96-448, An Investigation of the Rates, Charges, Billing Practices and Provision of Utility Service by Envirotech Utility Management Services (Ky. PSC Apr. 29, 1997) (water service limited to tenants in an apartment complex was not to or for the public).

³⁶ Case No. 2013-00163, at 6.

determination notwithstanding the fact that Equitable was not the owner of the producing wells or gathering lines that supplied the gas sold by Equitable. The location of the well or gathering line, not the identity of the owner of said well or line, defined the class of persons privileged under KRS 278.485 to receive service from Equitable.

The Commission finds that Peoples' operation of the farm tap system on the Kentucky West Virginia's gathering system is functionally identical to Equitable's operation of the system. Specifically, in response to Staff's initial request for information, Peoples stated that, to the best of its knowledge and belief, it does not provide retail gas service to any customer whose property and point of use is not within one-half air mile of a producing well or gathering line operated by one of its suppliers.³⁷ Peoples stated that since its acquisition of Equitable's assets in 2013, it has been ascertaining prospective customers' eligibility for natural gas service under KRS 278.485.³⁸ Peoples also correctly noted that in Case No. 2013-00163, in which the Commission authorized the transaction, Equitable stated that it was not serving any customers who were not entitled to receive service pursuant to KRS 278.485.³⁹ Johnson has not contested these assertions.

The Commission also finds that the equities of the case do not support reversal of its previous ruling that the provision of retail gas service to customers entitled to receive service by direct tap on the Kentucky West Virginia's gathering system is not service to or for the public subject to the Commission's plenary authority over utilities. Peoples and

³⁷ Peoples' Response to DR, at Response to Question 4.

³⁸ *Id.*, at Response to Question 5.

³⁹ *Id.*

its predecessor-in-interest have furnished this service as farm tap service with Commission approval for at least 28 years and have been entitled to rely in making business decisions on the Commission's jurisdictional determination.

The purpose of KRS 278.485 is to make gas service available to residents in rural parts of Kentucky who are not served by a gas distribution utility. The Commission finds that Peoples' operation of the farm tap system on the Kentucky West Virginia pipeline system is consistent with and in furtherance of the public policy of this Commonwealth to increase access to natural gas service.

By providing farm tap service, Peoples in effect acts as the gas producer or gathering line operator's sales agent in discharge of the producer or gathering line operator's statutory obligation under KRS 278.485 to furnish gas service to owners of property in close proximity to the production or gathering facilities. If Peoples were to cease providing this service, it is possible that some operators with marginal production could shut in wells or abandon gathering lines rather than deal with the administrative burden of retail sales.

On the other hand, customers of Peoples, including Johnson, have had notice of the limited nature of the gas service furnished by Peoples. Peoples' tariff clearly states that Peoples' gas supplier owns and operates the pipelines from which its customers are served, and that Peoples has the right to terminate gas service to any customer if its supplier ceases to operate the line from which the customer is served. Additionally, the 1965 Domestic Gas Sales Agreement between Equitable and Loran Rice, the customer

of record for service to Johnson's home, states that the company's sale of gas was subject to KRS 278.485.⁴⁰

Finally, the Commission notes that even if it were to conclude that Peoples is a utility, there is an absence of practical relief the Commission could grant. According to Peoples, its supplier abandoned the gathering line from which Johnson is served in early October 2018. Peoples states that it is unaware of any other pipeline or source of supply located within one-half air mile of Johnson's property, and when asked if Johnson's meter could be moved to another location, its supplier said that no other line was available.⁴¹ Johnson has not controverted these assertions, and has not identified any possible alternative source of natural gas.

The Commission's finding that Peoples is not a utility is dispositive of Johnson's claim that Peoples had a duty to maintain continuity of natural gas service to her. The Commission finds that Johnson's complaint should be dismissed with prejudice and this case closed.

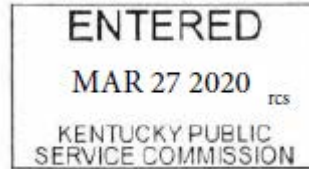
IT IS THEREFORE ORDERED that:

1. Peoples' motion to dismiss is granted.
2. Johnson's complaint is dismissed with prejudice.
3. This case is closed and removed from the Commission's docket.

⁴⁰ *Id.*, at Response to Question 7.

⁴¹ *Id.*, at Response to Question 2.

By the Commission



ATTEST:

A handwritten signature in blue ink, consisting of stylized initials and a surname.

Executive Director

Case No. 2018-00263

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