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October 1, 2018

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Gwen R. Pinson
Executive Director
Kentucky Public Service Commission
211 Sower Blvd
Frankfort, KY 40601

Re: Case No. 2018-00263

Dear Ms. Pinson:

Please find enclosed Peoples Gas KY LLC's Reply to its Motion to Dismiss in the above-referenced proceeding.

Should you have any questions, please let us know.

Sincerely,

Stoll Keenon Ogden PLLC

A handwritten signature in cursive script that reads "Monica H. Braun".

Monica H. Braun

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

GEORGIA JOHNSON)
)
 COMPLAINANT)
)
 v.)
)
 PEOPLES GAS KY LLC)
)
 DEFENDANT)
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)
)
)
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CASE NO. 2018-00263

PEOPLES GAS KY LLC’S REPLY IN SUPPORT OF MOTION TO DISMISS

Comes the Defendant, Peoples Gas KY LLC (“Peoples KY”), by counsel for its Reply in Support of Its Motion to Dismiss and states as follows.

I. Introduction

Complainant Georgia Johnson’s Response to Peoples KY’s Motion to Dismiss makes clear that the controlling facts are not in dispute:

- The Commission has already determined that Peoples KY’s is a farm tap system and not a “utility” for purposes of KRS 278.
- Peoples KY’s Tariff expressly states that it 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 whatsoever.
- Peoples KY has no other supply of gas in the area to serve Complainant.

Complainant acknowledges that unless the Commission both reverses itself and orders Peoples KY to revise its Commission-approved tariff, her Complaint fails. Because the Complainant

provides no basis for the extraordinary relief she seeks, Peoples KY respectfully requests the Commission dismiss the Complaint.

II. Peoples KY Is Not a Utility for Purposes of KRS 278.010 or KRS 278.030

Complainant does not deny that the Commission has already resolved the legal question she has raised, as it is beyond dispute that when Peoples KY acquired the assets of Equitable Gas Company, LLC (“Equitable”) in 2013, the Commission held that because Equitable was not a “utility” for purposes for KRS 278.0210, and was instead only a farm tap system, Commission approval pursuant to KRS 278.020 was not required.¹

Complainant alleges that because Peoples KY’s Tariff mentions a service area and states that it owns the customer meter and appurtenances thereto, it is a “utility” for purposes of KRS 278.010. These arguments misstate the law. First, 807 KAR 5:011, Sections 3 and 4 **require** Peoples KY to state the service area covered by its Tariff. Indeed, the tariff of every farm tap system on file with the Commission contains such a statement, including Peoples KY.

Second, KRS 278.485(2) **requires** that Peoples KY provide and maintain the customer meter:

The applicant for such gas service shall construct or cause to be constructed, and shall maintain and keep in good repair, the service lines, and shall provide and install or cause to be installed, and keep in good repair, the necessary automatic gas regulators, and shall pay the entire cost thereof. ***The company, at its own expense, shall provide, install, and maintain the necessary gas meters.***²

Peoples KY’s Tariff tracks the statute’s requirements:

Other than the meter, service tap, saddle and first service shut off valve, which shall be owned and maintained by Peoples Gas KY LLC, all other approved equipment and material required for

¹ Case No. 2013-00163, *In the Matter of: 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* (Ky. PSC Sept. 3, 2013).

² (emphasis added).

service under this tariff shall be furnished, installed, and maintained by the customer at the customer's expense and shall remain the customer's property... Such other equipment shall include, but is not limited to, the line from the service tap to the point of use, gas regulation equipment, and desiccant tanks or other moisture control equipment as approved and required by Peoples Gas KY LLC.

Complainant's allegations show only that Peoples KY is complying with the statute and regulations that govern farm tap service.

Complainant next argues that the Commission's determination in 2013 that Peoples KY was acquiring a farm tap system conflicts with a ruling from nearly a decade prior involving the Pollitt natural gas system. This is incorrect for several reasons. First, and most importantly, Peoples KY is acting in accordance with and reliance on the Commission's final order that held that the assets it purchased were *not a utility*. Peoples KY's Tariff further evidences its understanding and acceptance of the Commission's ruling. As such, Peoples KY's cannot operationally perform as if it is a utility for purposes of KRS 278.020; it has no other source of supply or distribution network. Further, it had no reason to obtain or construct same given the Commission's determination.

Second, the facts in *Pollitt v. Commonwealth* bear no relationship to the present situation. In *Pollitt*, an unmarked natural gas line was discovered to be serving 50 customers.³ The Commission ordered Pollitt, the operator, to apply for a certificate of public convenience and necessity and a schedule of rates.⁴ Pollitt appealed, and alleged he was operating a "farm tap" system.⁵ The Kentucky Court of Appeals upheld the prior rulings that although the pipeline had

³ 2005 Ky. App. Unpub. LEXIS 959, *2 (Ky. Ct. App. 2005).

⁴ *Id.*

⁵ *Id.* at 6-7.

previously been a gathering line, it had become a distribution line after its contract with a gas supplier was terminated in 1997.⁶

In contrast, Peoples KY sought a certificate of public convenience and necessity when it acquired Equitable's assets, but the Commission determined a certificate was not required. Peoples KY filed its schedule of rates with the Commission, in addition to terms of service making evident it was only providing farm tap service. Finally, it is not disputed that the pipeline serving the Complainant is a gathering line. The pipeline is connected to a single well, and ties into another gathering line. In short, *Pollitt* is not relevant to this case.

III. Peoples KY's Tariff is Not Contrary to Law

Complainant does not contest that Peoples KY's Tariff allows for termination of gas service in this instance, or that the Tariff memorializes the Commission's final order. Instead, Complainant alleges that the Commission reached an "erroneous conclusion" in Case No. 2013-00163, and then "unlawfully approved" Peoples KY's tariff.⁷ Complainant was not a party to Case No. 2013-0163, and made no attempt to intervene. In any event, the time period in which to appeal the Commission's final order has long passed, and Peoples KY has operated in adherence with the order since issuance.

The Commission thoroughly analyzed whether Equitable was a utility, before properly concluding it was not. In so doing, the Commission expressly held that Equitable was a farm tap system even though it did not own any producing wells or gathering lines in Kentucky. As the acquirer, Peoples KY has done nothing other than step into the shoes of Equitable.

⁶ *Id.*

⁷ Response to Motion to Dismiss at 5-6.


IV. Conclusion

Because the Commission’s prior order and Peoples KY’s Tariff both demonstrate that Peoples KY is a farm tap system pursuant to KRS 278.485, and is not a “utility” for purposes of KRS 278.010 or KRS 278.030, Peoples KY respectfully requests the Commission dismiss the Formal Complaint of Georgia Johnson in an order stating that Peoples KY may comply with its Tariff and discontinue service when its supplier terminates the gas supply.

Dated October 1, 2018

Respectfully submitted,

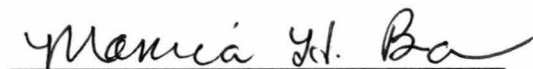
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Counsel for Peoples Gas KY LLC

CERTIFICATE OF SERVICE

I hereby certify that true and accurate copies of the foregoing was hand-delivered to the Commission on October 1, 2018, and a copy was sent via electronic mail and United States mail, postage prepaid to:

Tom FitzGerald
Kentucky Resources Council
P.O. Box 1070
Frankfort, KY 40601
fitzkrc@aol.com


Counsel for Peoples Gas KY LLC