

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF)	
JURISDICTIONAL STATUS OF EAST KENTUCKY)	CASE NO.
MIDSTREAM, LLC, AND OF ITS COMPLIANCE)	2022-00238
WITH KRS CHAPTER 278, 807 KAR CHAPTER)	
005, AND 49 CFR PARTS 191 AND 192)	

ORDER

On February 27, 2026, the Commission issued a final Order in this matter. On March 19, 2026, East Kentucky Midstream, LLC (East Kentucky Midstream) filed a petition for rehearing (Petition). On March 26, 2026, Kentucky Frontier Gas, LLC (Kentucky Frontier) filed a response to the petition.

MOTION

In the motion for rehearing, East Kentucky Midstream “hereby adopts and incorporates” its post-hearing brief as part of its rehearing motion.¹ East Kentucky Midstream reiterated its arguments in its post-hearing brief but cited four additional specific errors allegedly made in the final Order. East Kentucky Midstream stated it has no obligation under its own tariff to guarantee service; however, East Kentucky Midstream maintained it also is not prohibited from maintaining service.² East Kentucky Midstream argued that a finding it is not a KRS 278.504(1) intrastate pipeline is necessarily inconsistent with the conclusions that EKM is a KRS 278.504(3) local distribution

¹ East Kentucky Midstream’s Petition for Rehearing (Petition) (filed Mar. 19, 2026) at 2.

² Petition at 7-8.

company (LDC) and therefore a jurisdictional utility.³ East Kentucky Midstream alleged the Order uses categories and factors (terminology) outside of rate regulation to make determinations about utility status.⁴ In its petition, East Kentucky Midstream construed the final Order as a finding by the Commission that the entirety of the business was a LDC.⁵

According to the motion, “hundreds of producing natural gas wells in eastern Kentucky depend on East Kentucky Midstream as a first purchaser and on its gathering system; without East Kentucky Midstream, dozens of producers would have no access to purchasers”.⁶ East Kentucky Midstream argued that, “[g]iven seasonality and market fluctuations, there are times when farm-tap and other East Kentucky Midstream customer demands exceeds the supply of producer gas, but that does negate the continuing critical function of East Kentucky Midstream’s system for moving gas out of the producing fields”.⁷ In addition, East Kentucky Midstream argued that attempting to regulate it as a utility is an impermissible intrusion by the Commission into production and gathering of natural gas under the Natural Gas Act.⁸

According to East Kentucky Midstream, the farm tap tariff on file supports its position that it is a farm tap utility.⁹ East Kentucky Midstream noted that the cost to

³ Petition at 8-9.

⁴ Petition at 10.

⁵ Petition at 10-11.

⁶ Petition at 3.

⁷ Petition at 3.

⁸ Petition at 5.

⁹ Petition at 5-7.

upgrade service on the system to comply with KRS 278.010(3)(b) utility standards for metering, inspections, maintenance, quality of service and safety will require a “massive investment”.¹⁰

East Kentucky Midstream argued that, although not a traditional intrastate pipeline transporting gas for a fee between seller and buyer, the system arguably serves a transmission function for bulk natural gas customers, by transporting local producer gas comingled with interstate gas to customers when needed.¹¹ East Kentucky Midstream’s farm-tap tariff already distinguishes such bulk customers and requires that they have a special contract with East Kentucky Midstream.¹² According to the petition, regulation of rates based at an accurate cost of service-based rate may be unfeasible, due to the complexity and overlapping gathering function throughout the East Kentucky Midstream system.¹³ East Kentucky Midstream noted that, in its opinion, the Order failed to address the terms of service and rates to Kentucky Frontier;¹⁴ to resolve the dispute over the “[d]isputed” lines between Kentucky Frontier and East Kentucky Midstream;¹⁵ and the Order failed to explain and set out a step by step plan for the utility to transition to LDC service.¹⁶

¹⁰ Petition at 7.

¹¹ Petition at 3-4.

¹² Petition at 11-12.

¹³ Petition at 12.

¹⁴ Petition at 12-13.

¹⁵ Petition at 13-14.

¹⁶ Petition at 14-16.

East Kentucky Midstream stated it was unable to comply with the required tariff filings by the date stated in the Order nor are they capable of filing the appropriate annual and audit reports required by the Commission.¹⁷ Based on its arguments, East Kentucky Midstream requested: (1) the Commission change or vacate the final Order to find that East Kentucky Midstream remains a gas-gathering, farm-tap system and regulated in that manner; or, in the alternative, within the general regulation of the East Kentucky Midstream system as a gathering, farm-tap system that an incidental transmission function for bulk customers be recognized and distinguished in its regulation; (2) resolve the dispute raised by Kentucky Frontier and issues in the Sander report; (3) stay or extension of all deadlines in the final Order or in the alternative, if the Commission does not vacate or modify its Order, an extension of all deadlines to reflect the realities of becoming a regulated utility.¹⁸

RESPONSE

On March 26, 2026, Kentucky Frontier filed a response. Kentucky Frontier argued that East Kentucky Midstream does not meet the standard set forth in KRS 278.400 for grant of rehearing by the Commission.¹⁹ Kentucky Frontier emphasized that East Kentucky Midstream no longer produces the majority of its gas but instead purchases the natural gas from the interstate market.²⁰ Kentucky Frontier also noted that the

¹⁷ Petition at 14-16.

¹⁸ Petition at 16.

¹⁹ Kentucky Frontier's Response to the Petition for Rehearing (Response) (filed Mar. 26, 2026) at 4.

²⁰ Response at 4-6.

investigation was to determine East Kentucky Midstream's jurisdictional status.²¹ Kentucky Frontier stated that the other issues raised by East Kentucky Midstream may be addressed in separate proceedings now that the Commission has made a finding relating to jurisdictional status.²²

LEGAL STANDARD

KRS 278.400, which establishes the standard of review for motions for rehearing, limits rehearing to new evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission order is deemed unreasonable only when "the evidence presented leaves no room for difference of opinion among reasonable minds."²³ An order can only be unlawful if it violates a state or federal statute or constitutional provision.²⁴

By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate matters fully addressed in the original Final Order.

²¹ Response at 6.

²² Response at 6.

²³ *Energy Regulatory Comm'n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

²⁴ *Public Service Comm'n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm'n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

DISCUSSION AND FINDINGS

Having considered the petition, response and the evidence of the record, the Commission affirms its final Order and denies the request for rehearing. Despite citing KRS 278.400, East Kentucky Midstream's petition focuses on matters fully investigated and resolved in the final Order in this case. In fact, East Kentucky Midstream adopted its arguments set out in its post-hearing brief into the petition.²⁵

To be clear, the Commission opened this case

to determine whether East Kentucky Midstream is selling, furnishing, or transporting natural gas to or for the public and of so, would therefore be subject to the Commission's jurisdiction as a utility under KRS 278.040. An investigation is also necessary to determine if the additional segments of pipeline owned and operated by East Kentucky Midstream should be regulated for compliance with federal pipeline safety standards pursuant to KRS 278.495(2).²⁶

In order to address any issues related to rates and services, the Commission had to first determine whether East Kentucky Midstream was a jurisdictional utility providing distribution natural gas service. The Commission found that at least portions of the East Kentucky Midstream system were used to distribute natural gas.²⁷ Given that the focus of this matter was to determine if East Kentucky Midstream was a jurisdictional utility, the Commission acknowledges that the Order did not make any findings related to ownership of disputed lines or how the Division of Inspections would classify and inspect the East Kentucky Midstream system. To reach a determination regarding any outstanding issues, the Commission will proactively open an investigation into the rates and services of East

²⁵ Petition at 2.

²⁶ Opening Order (Ky. PSC Aug. 11, 2022) at 6.

²⁷ Final Order (Ky. PSC Feb. 27, 2026) at 13-14.

Kentucky Midstream following the issuance of this rehearing Order. The new investigation may assist East Kentucky Midstream in resolving some of the questions raised in its rehearing that are inappropriate to resolve in this case. The Division of Inspections will separately correspond with East Kentucky Midstream to establish an inspection schedule to ensure compliance with all state and federal regulations.

Recognizing that no tariffs have been filed, the Commission will grant an extension of the deadline to submit appropriate tariff sheets. In addition, the Commission will grant an extension to file all required reports. The Commission recognizes that the utility has not had to endeavor to file those reports in the past but East Kentucky Midstream must make a concerted effort to complete and file those reports to the best of its capabilities.

IT IS THEREFORE ORDERED that:

1. East Kentucky Midstream's petition for rehearing is denied.
2. No later than May 15, 2026, East Kentucky Midstream shall file new tariff sheets pursuant to this Order using the Commission's electronic Tariff Filing System setting forth the rates, charges, and modifications necessary to operate as a distribution utility.
3. East Kentucky Midstream shall file an annual report with the Commission by May 15, 2026, as well as comply with all reporting requirements of a jurisdictional utility set forth in KRS Chapter 278 and 807 KAR 5:001.
4. All terms and conditions in the final Order issued February 27, 2026, not in conflict with this Order shall remain in full effect.
5. This case is closed and removed from the Commission's docket.

Entered on this 8th day of April, 2026.


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