

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF)	
JURISDICTIONAL STATUS OF ORBIT GAS)	
TRANSMISSION, INC., AND OF ITS)	CASE NO.
COMPLIANCE WITH KRS CHAPTER 278, 807)	2025-00017
KAR CHAPTER 005, AND 49 CFR PARTS 191)	
AND 192)	

ORDER

The Commission, on its own motion, finds this proceeding should be initiated to investigate the jurisdictional status of Orbit Gas Transmission, Inc. (Orbit Gas) and its compliance with KRS Chapter 278, 807 KAR Chapter 005, and 49 C.F.R. Parts 191 and 192. The Commission further finds that the investigation should include whether Orbit Gas's tariffs on file with the Commission comply with applicable statutory and regulatory requirements.

BACKGROUND

Orbit Gas is a Kentucky corporation that provides gas service in Christian, Hopkins, McLean, and Muhlenberg counties, Kentucky.¹ In 2005, Orbit Gas acquired all of the assets of Orbit Gas Company (Orbit Company).² The parties applied to the Commission for approval of the acquisition pursuant to KRS 278.020. In approving the

¹ *Annual Report of Orbit Gas to the Public Service Commission for the Calendar Year December 31, 2023* (2023 Annual Report) at 6, 9.

² Case No. 2005-00427, *Joint Application of Orbit Gas Company and Orbit Gas Transmission, Inc. for Authority and Permission to Sell and Purchase the Orbit Gas Company Natural Gas Distribution System and All Related Assets* (Ky. PSC Dec. 8, 2005).

transaction, the Commission found that Orbit Company was a provider of farm tap and intrastate transmission services and was a public utility subject to the jurisdiction of the Commission. The Commission found that upon completion of the approved acquisition, Orbit Gas would be a public utility subject to the same jurisdiction.³

Orbit Gas has approximately 14.6 miles of intrastate transmission line and 0.64 miles of regulated gathering line that the Commission regulates for compliance with federal pipeline safety regulations.⁴

Orbit Gas files annual financial reports with the Commission in accordance with 807 KAR 5:006, Section 4. Orbit Gas also pays a utility assessment pursuant to KRS 278.030. The requirement to file an annual report and to pay the utility assessment applies only to jurisdictional utilities.⁵

According to Orbit Gas's 2023 Annual Report, Orbit Gas had 41 residential customers, and 13 commercial/industrial customers, and 2 sales-for resale customers as of the end of the year.⁶ Orbit Gas claimed gas sales revenues in the amount of \$658,218 and no revenue from transportation services.⁷ Orbit Gas paid a PSC assessment under KRS 278.130 in the amount of \$3,120.⁸

³ Case No. 2005-00427, *Joint Application of Orbit Gas Company and Orbit Gas Transmission, Inc. for Authority and Permission to Sell and Purchase the Orbit Gas Company Natural Gas Distribution System and All Related Assets* (Ky. PSC Dec. 8, 2005).

⁴ Inspection Report No. 11042022, P.S.C Division of Inspections, dated Nov. 2, 2022.

⁵ 807 KAR 5:006, Section 4 (2)(a) requires "[e]very utility" to file an annual financial and statistical report. KRS 278.030 provides for assessments against "utilities."

⁶ 2023 Annual Report at 31.

⁷ 2023 Annual Report at 26.

⁸ 2023 Annual Report at 32.

According to Orbit Gas's 2024 Annual Report, Orbit Gas had 39 residential customers, 15 commercial/industrial customers and 2 sales-for-resale customers as of the end of the year.⁹ Orbit Gas claimed gas sales revenues in the amount of \$506,978 and no revenue from transportation services.¹⁰ Orbit Gas did not pay a PSC assessment under KRS 278.130 on its gas sales revenue.¹¹

Orbit Gas has a tariff for intrastate transportation and farm tap service on file with the Commission.¹² Orbit Gas also has two contracts for gas sales and one for gas transportation service on file with the Commission.¹³ Orbit Gas does not have a distribution tariff.

The provisions of the tariff for farm tap service became effective on December 15, 2005, and have not been amended since that time. The terms and conditions for farm tap service provide: "Applicant shall pay for gas service each month at the Company's office a rate equal to the residential rate, including monthly minimum charges, in effect for the previous month in the nearest area served by a regulated public utility."¹⁴ The actual rates for service are not stated in the tariff. The tariff's Transportation Service Rate

⁹ *Annual Report of Orbit Gas to the Public Service Commission for the Calendar Year December 31, 2024* (2024 Annual Report) at 31.

¹⁰ 2024 Annual Report at 26.

¹¹ 2024 Annual Report at 32.

¹² P.S.C. Ky. No. 1, Sheet Nos. 3 through 6 (Transportation) and Sheet No. 2 (Farm Tap) effective Dec. 15, 2005.

¹³ P.S.C. No. 1, Sheet No. 2, effective Dec. 15, 2005.

¹⁴ P.S.C. No. 1, Sheet No. 2, Appendix B, effective Dec. 15, 2005.

TS-1 was changed effective February 3, 2024, from 39 cents per 1000 cubic feet to:
“Rates for transportation services will be addressed in a special contract.”¹⁵

LEGAL STANDARDS

The Commission has exclusive jurisdiction over the rates and services of all utilities in the state pursuant to KRS 278.040. KRS 278.010(3) defines “utility” in pertinent part as:

[A]ny person except a regional wastewater commission established pursuant to KRS 65.8905 and, for purposes of paragraphs (a), (b), (c), (d), and (f) of this subsection, a city, 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 same, to or for the public, for compensation, for light, heat, power, or other uses;
- (c) The transporting or conveying of gas, crude oil, or other fluid substance by pipeline to or for the public, for compensation;

The characterization of a service as “to or for the public” is not determined by the number of customers served or the size of the service territory. Rather, an entity provides service to or for the public when it “holds [itself] out as willing to serve all who apply up to the capacity of [the] facilities.”¹⁶ Provided, however, that “utility service that is limited to a defined, privileged class of persons is not service to or for the public.”¹⁷

¹⁵ P.S.C. No. 1, Sheet No. 2, Appendix B, effective Dec. 15, 2005.

¹⁶ 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), Order at 5.

¹⁷ Case No. 2018-00372, *Electronic Investigation of Commission Jurisdiction over Electric Vehicle Charging Stations* (Ky. PSC June 19, 2019), Order at 9.

KRS 278.160 requires each utility to file with the Commission schedules showing all rates and conditions for services rendered. KRS 278.180(1) prohibits a utility from making a change to any rate except upon 30 days' notice to the Commission of "the changes proposed to be made and the time when the changed rates will go into effect."

The Commission has exclusive jurisdiction over the rates and service of utilities and is charged with enforcing the provisions of KRS Chapter 278. KRS 278.260 provides that the Commission, on its own motion or after receiving a complaint, may investigate whether "any regulation, measurement, practice or act affecting or relating to the service of the utility or any service in connection therewith is unreasonable. KRS 278.250 provides that the Commission may investigate and examine the condition of any utility subject to its jurisdiction."

Pursuant to KRS 278.485, a gas pipeline company that obtains gas from producing wells located within this state must furnish, upon request, retail gas service to any "owner of real estate whose property and point of desired service is located within one-half (1/2) air-mile of said company's producing gas well or gas gathering pipeline." Pursuant to KRS 278.504, a local distribution company includes any utility or any other person, other than an interstate pipeline or an intrastate pipeline, engaged in transportation or local distribution of natural gas and the sale of natural gas for ultimate consumption.

Numerous regulations set forth in Chapter 5 of Title 807 of the Kentucky Administrative Regulations (KAR) apply to natural gas companies. These include 807 KAR 5:006, establishing general rules applicable to all utilities; 807 KAR 5:022, establishing general rules which apply to gas utilities; and 807 KAR 5:026, regarding service from natural gas gathering pipeline systems. In addition, administrative regulation

807 KAR 5:026, Section 9(1), requires each company that provides gas service pursuant to KRS 278.485 to “charge rates filed with and approved by the commission in accordance with KRS Chapter 278 and 807 KAR Chapter 5.” The regulation also requires the company to obtain Commission approval for any adjustment in rates “through a proposed tariff submitted at least sixty (60) days prior to its proposed effective date.”

DISCUSSION

As noted above, amongst other issues this matter is being initiated to investigate the jurisdictional status of Orbit Gas. Orbit Gas has paid a utility assessment on all of its gas sales revenue in each of the past five years except for 2024. Orbit Gas has a gas transportation tariff but has shown no transportation revenue in its last five annual reports. Orbit Gas has a farm tap tariff, but revenue from farm tap sales is not subject to the utility assessment. The Commission finds on its own motion that an investigation should be conducted to determine if Orbit Gas is distributing or selling gas “to or for the public.”

IT IS THEREFORE ORDERED that:

1. This proceeding is opened to investigate the jurisdictional status of Orbit Gas; its compliance with KRS Chapter 278, 807 KAR Chapter 005, and 49 CFR Parts 191 and 192; and the sufficiency of its tariffs on file with the Commission.
2. Orbit Gas is made a party to this proceeding.
3. Any interested party may, by counsel, file a motion to intervene within 14 days of the date of service of this Order.
4. Pursuant to 807 KAR 5:001, Section 8(9), within seven days of service of this Order, Orbit Gas shall file a written statement with the Commission that:

a. Certifies that it, or its agent, possesses the facilities to receive electronic transmissions; and

b. Sets forth the electronic mail address to which all electronic notices and messages related to this proceeding shall be served.

5. Unless otherwise ordered by the Commission, the procedures set forth in 807 KAR 5:001, Section 8, related to service and electronic filing of papers shall be followed in this proceeding.

6. Pursuant to 807 KAR 5:011, Section 8(9), within seven days of service of this Order, Orbit Gas shall file by electronic means a written statement that it waives any right to service of Commission orders by United States mail and that it or its authorized agents possess the facilities to receive electronic submissions.

7. Within 14 days of service of this Order, Orbit Gas shall file a statement setting forth a description of the natural gas services it currently provides. This statement shall include:

a. A description of all gas distribution services that Orbit Gas offers.

b. A description of all gas transportation services that Orbit Gas offers pursuant to its transportation tariff. This shall include the number of transportation customers that Orbit has served in each of the last five years.

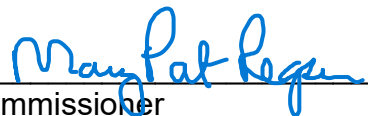
c. A description of all sources of gas supply.

8. Orbit Gas shall respond to any requests for information propounded by Commission Staff, as provided in those requests.

PUBLIC SERVICE COMMISSION


Chairman

Vice Chairman


Commissioner

ATTEST:


Executive Director



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