

IN THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA
CHARLESTON



EQUITRANS, L.P.

Petitioner,

v.

No. 22-0293

**PUBLIC SERVICE COMMISSION OF WEST VIRGINIA, RONALD HALL, ASHTON
HALL and HOPE GAS, INC., dba DOMINION ENERGY WEST VIRGINIA**

Respondent.

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**AMICUS CURIAE BRIEF OF THE CONSUMER ADVOCATE
DIVISION OF THE PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA**

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May 31, 2022

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I. STATEMENT OF THE CASE

This appeal arises from a March 16, 2022 Order of the Public Service Commission of West Virginia (PSC or Commission) in Commission Case No. 20-0994-G-C, Ronald L. Hall and Ashton Hall v. Hope Gas, Inc., dba Dominion Energy of West Virginia and Equitrans, L.P. In its March 16 Order, the Commission denied the exceptions of Equitrans, L.P. (Equitrans) to an August 12, 2021 Recommended Decision of the Administrative Law Judge (ALJ). That Commission-affirmed order required Hope to serve the Complainants through a specific Equitrans line via a field tap that already existed for the requested service address.

The underlying record was clear. The Complainants in this case were seeking natural gas utility service for a residence located at 3471 8 Mile Ridge Road, Reader, West Virginia. Natural gas service had been provided to 3471 8 Mile Ridge Road by Hope Gas, Inc., dba Dominion Energy of West Virginia (Hope) for a number of years. The Complainants were new owners of the property, and had renovated the house at 3471 8 Mile Ridge Road. When the renovations were completed in 2020, the Halls requested natural gas service from Hope, and were denied service. Hope represented that Equitrans had denied Hope's request to reestablish a service connection on behalf of the Halls. (Complaint; Hope 12/17/20 Answer, Attachment A; Staff Exh. No. 1, Final Engineering Memorandum, p. 1; Tr. pp. 9-11, 15-16, 31-34; FF Nos.1, 4 & 7, Recommended Decision at p.6).

Even after being added as a respondent to the Complaint, Equitrans never responded to the Complainant's service request, and instead generally maintained that the Public Service Commission lacked the authority to address the matters in the complaint. (Id.)

Hope had provided gas service to utility customers at 3471 8 Mile Ridge Road via a field tap on a line (identified as Line H13087) which is presently owned by Equitrans. The only pipeline which is available to serve customers in the area of 3471 Eight Mile Ridge Road is owned by

Equitrans, and there are other Hope utility customers served by field tap connections to those same Equitrans lines. (Staff Exh. No. 1; Tr. pp. 39, 51-53; FF No. 13, Recommended Decision at p.6).

There is still a regulator and tap on Equitrans Line H13087 to serve 3471 Eight Mile Ridge Road. (Tr. pp. 16, 51-52, 56; Staff Exhibit No. 1; FF No. 6, Recommended Decision at p. 6). The meter for the prior service had been pulled by Hope on June 12, 2019. (Hope Post-Hearing Request No. 2; FF No. 30, Recommended Decision at p. 8). The last time that residence at 3471 Eight Mile Ridge Road had received service was May 29, 2018. (Hope Post-Hearing Request No. 1; FF No. 29, Recommended Decision at p.7).

The only thing required to reinstitute natural gas utility service to the Halls at 3471 Eight Mile Ridge Road would be for Hope to install a new meter, and conduct a new meter test and testing of the service line after the new meter is set by Hope. (Tr. p. 53, FF No. 18, Recommended Decision at p.7). Hope represented that it was willing to install a gas meter and supply gas to the Complainants if Equitrans will allow it. (Tr. p. 53, FF No. 19, Recommended Decision at p.7).

On exception and on appeal to the Court, Equitrans has not disputed any of the salient facts in this case. Instead, it has chosen to broadly maintain that the Public Service Commission lacks the authority to address the merits of the complaint. Equitrans is in essence asserting that any authority the Public Service Commission may have had to address the complaint has been preempted and negated by a petition Equitrans has filed with the Federal Energy Regulatory Commission (FERC). In that petition, Equitrans sought the FERC's permission to abandon (and now transfer) all of the gathering lines and facilities it operates in the State of West Virginia. It has not filed any petition with or sought any approval from the Public Service Commission of West Virginia to abandon or transfer any specific pipelines which are used and relied upon to provide public utility services to customers in the State of West Virginia.

Equitrans' jurisdictional objections were fully and appropriately rejected by the Commission Order on Exceptions. Equitrans' appeal to the Supreme Court of Appeals is solely based on an alleged lack of Commission jurisdiction over the matter below. It has not asserted any grounds to justify the abandonment of any individual lines used to serve West Virginia utility customers.

The Consumer Advocate Division was not a party to the case below, but in filing this Amicus Curiae brief, the Consumer Advocate Division wishes to address Equitrans' blanket contention that the Public Service Commission lacks any jurisdiction or authority over the denial or cessation of service to an existing or a prospective public utility customer in West Virginia, merely because Equitrans has filed a generic petition to abandon or transfer its gathering system with the Federal Energy Regulatory Commission.

Equitrans and Hope are both required to respond to reasonable and appropriate requests for public utility services from West Virginia customers unless and until they have sought and obtained the Public Service Commission's consent and approval to abandon the lines and facilities which are relied upon to fulfill its public service obligations to West Virginia customers. We believe that Equitrans' claim to the contrary is inconsistent with the public service obligations that are already established for Equitrans as a company whose facilities have been dedicated to providing public utility services in the state of West Virginia under W. Va. Code §24-2-1, and as a common carrier of natural gas over intrastate pipelines in West Virginia under W. Va. Code §24-3-3a.

The Consumer Advocate Division of the Public Service Commission of West Virginia, which has the statutory obligation and duty to generally represent the interest of residential utility customers in West Virginia, believes that the jurisdictional arguments advanced by Equitrans in

this case are simply wrong and are without merit, and support the Public Service Commission's exercise of jurisdiction in this case.

The Commission's exercise of jurisdiction over this customer complaint was reasonable and appropriate, and the relief granted by the Commission in this case is consistent with the clear and unambiguous orders which clearly set forth the parameters by which the rights and interests of public utility customers would be protected.

The exercise of the Public Service Commission's jurisdiction in this matter is consistent with the Commission's applicable statutory authority and responsibilities. It is consistent with and supported by previous holdings of this Court. Furthermore, it is consistent with policies, practices and procedures which have been implemented by prior Commission orders, and agreed to by Equitrans and its predecessors over several decades. These procedures clarify, define, preserve and protect the public utility service obligations which Equitrans and its predecessors have extended to thousands of field tap customers in West Virginia.

When Hope initially denied the Halls' service request, Hope represented that Equitrans had declined to allow Hope to set a new meter and service tap at 3471 Eight Mile Road. Hope also noted that Equitrans had filed a petition with the Federal Energy Regulatory Commission (FERC) by which Equitrans had sought the FERC's authority to abandon its entire West Virginia gathering system.

Equitrans had not filed any petition with the Public Service Commission of West Virginia to abandon any portion of its facilities which were used or relied upon to provide local natural gas service to local public utility customers.

Instead of processing the service request in the ordinary course of business, Hope represented that its hands were tied, and declined to set a new meter. To the best of the CAD's knowledge, gas service to the property remains off to this day, and has not been restored.

The Commission's decision in this matter, along with the underlying Recommended Decision, is well supported by the Commission's statutory authority, previous holdings of this Court, and previous rulings by the Commission. Equitrans' position is also contrary to the sworn promises and acknowledgements of its continuing public service obligations to West Virginia customers, as previously made to the Commission by Equitrans and its corporate predecessors.

Equitrans did not challenge the Commission's determination that a tap should be provided to the Halls in this specific set of circumstances. Instead, it has solely focused on whether the Commission has jurisdiction in this matter.

The argument section of Equitrans' appeal is an almost complete word for word recitation of the argument section from Equitrans and Big Dog Midstream, LLC's (Big Dog) pending Writ of Prohibition, Case No. 22-0229. The only deviation is that in the Writ of Prohibition, reference is made to both Equitrans and Big Dog instead of just Equitrans.

The Consumer Advocate Division urges the Court to reject Equitrans' spurious arguments, and require it to immediately comply with the Commission's order in this case. Equitrans is wrongfully interfering with the provision of public utility service to the Halls at a previously served customer address.

SUMMARY OF ARGUMENT

This appeal should be denied as it is clear the Commission has the right to exert jurisdiction in this matter. In Boggs v. Public Serv. Comm'n, 154 W.Va. 146, 174 S.E.2d 331 (1970), this Court stated where a natural gas pipeline of a public utility "has been used directly to serve retail rural customers over a long period of time, such use constitutes a dedication of that line to the public service... and the owner thereof will continue to operate as a public utility...."

There is no doubt the gathering system currently owned by Equitrans has been historically used by a public utility to directly serve retail rural customers in the area for multiple decades. As

the current owner, Equitrans is obligated to continue the operation of those line as a public utility asset.

Equitrans' acknowledgement of the continuing public service obligation and the responsibilities associated with its gathering system were clearly set forth by its corporate predecessor, as a condition of the facilities being transferred to Equitrans. That acknowledgement has been reflected in what the Commission and the parties have generally referred to as "the Crawford Affidavit". The Commission did not create jurisdiction through the Crawford Affidavit where jurisdiction did not exist. Rather, the Crawford Affidavit is an acknowledgement that Equitable Resources, and all of the subsidiary parts which it was broken into, fully recognized that the West Virginia Public Service Commission had continuing jurisdiction over the utility assets after the corporate reorganization of Equitable Resources was completed. This affidavit was required as a condition of the Commission approving the proposed corporate reorganization and the transfer of assets, and was binding on both the respective Companies and their successors in interest.

Equitable Resources was required to obtain the Public Service Commission's prior consent and approval of its proposed corporate reorganization and transfer of utility assets pursuant to the provisions of West Virginia Code §24-2-12. If the parties had not provided those assurances to the Commission by affidavit, the Commission would have denied to proposed transfer and reorganization of utility facilities as contrary to the public interest.

Responding to reasonable and appropriate requests for service is just one of the continuing public service obligations of Equitable Resources and its successors in interest. Equitrans' refusal to respond to such a request constitutes an unreasonable and inappropriate interference with the provision of public utility service to a customer within the utility's service territory. The parties' continued refusal to provide utility services to the Hall residence constitutes an unreasonable

practice under West Virginia Code § 24-2-7, and the Public Service Commission has the clear statutory authority to require both Equitrans and Hope to take appropriate measures to correct the denial of service to the Halls.

II. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The Court has issued a scheduling order indicating this matter will be scheduled for Rule 19 argument in the September 2022 Term of the Court. The CAD believes that the disposition of this appeal will be aided by oral argument.

III. STANDARD OF REVIEW

Review of a final order of the Commission by the Supreme Court of Appeals of West Virginia is provided in W.Va. Code §24-5-1. This Court has recognized the broad legislative powers of the Commission to address the interests of each party. W. Va. Citizens Action Group v. Pub. Serv. Comm'n, 233 W. Va. 327, 758 S.E.2d 254 (2014) (quoting W.Va. Code §24-1-1(a)-(b) (1986));

The principle is well established by the decisions of this Court that an order of the public service commission based upon its finding of facts will not be disturbed unless such finding is contrary to the evidence, or is without evidence to support it, or is arbitrary, or results from a misapplication of legal principles.

Syl. Pt. 1, Sierra Club v. Pub. Serv. Comm'n, 827 S.E.2d 224, 2019 W. Va. LEXIS 175, 2019 WL 1890250 (2019) (citing United Fuel Gas Co. v. Pub. Serv. Comm'n, 143 W. Va. 33, 99 S.E.2d 1 (1957); Syl. Pt. 5, Boggs v. Pub. Serv. Comm'n, 154 W. Va. 146, 174 S.E.2d 331 (1970)).

The detailed standard for our review of an order of the Public Service Commission . . . may be summarized as follows: (1) whether the Commission exceeded its statutory jurisdiction and powers; (2) whether there is adequate evidence to support the Commission's findings; and, (3) whether the substantive result of the Commission's order is proper.

Syl. Pt. 2, Pool v. Greater Harrison Cty. Pub. Serv. Dist., 821 S.E.2d 14, 2018 W. Va. LEXIS 695, 2018 WL 5913873 (2018) (referring to Syl. Pt. 2, Monongahela Power Co. v. Pub. Serv. Comm'n,

166 W. Va. 423, 276 S.E.2d 179 (1981); citing Syl. Pt. 1, Central W. Va. Refuse, Inc. v. Pub. Serv. Comm'n, 190 W. Va. 416, 438 S.E.2d 596 (1993)).

In W.Va. Citizens Action, the Court recognized that “on questions of expediency, or as to what would be best in the interest of the petitioner, or the public served...the Legislature intended that the judgment of the [Public Service] Commission should prevail.” W.Va. Citizens Action, 233 W.Va. at 332, 758 S.E.2d at 259, citing, United Fuel Gas Co. v. Pub. Serv. Comm'n, 73 W.Va. 571, 591, 80 S.E. 931, 939 (1914).

In finding that the Commission carefully explained its decision in an order that contains findings of fact, conclusions of law and a reasoned analysis of the issues the Court stated,

As a result, under this Court’s highly deferential standard of review, we find no reason to disturb the Commission’s order.

W.Va. Citizens Action, 233 W.Va. at 338, 758 S.E.2d at 265.

In reviewing a Commission Order, this Court is guided by the established holdings in Sexton v. Pub. Serv. Comm'n, 188 W.Va. 305, 423 S.E.2d 914 (1992) and Monongahela Power Co. v. Pub. Serv. Comm'n, 166 W.Va. 423, 276 S.E.2d 179 (1981). Braxton Cnty. Citizens for a Better Env’t v. Pub. Serv. Comm'n, 189 W.Va. 249, 429 S.E.2d 899 (1993), Harrison Rural Electrification Ass’n, Inc. v. Pub. Serv. Comm'n, 190 W.Va. 439, 438 S.E.2d 782, (1993) and Mountain Communities for Responsible Energy v. Pub. Serv. Comm'n, 222 W.Va. 481, 665 S.E.2d 315 (2008).

IV. ARGUMENT

1. The Commission has the clear statutory authority to require Equitrans and Hope to continue and reestablish natural gas service to the Hall residence by virtue of the longstanding public service obligations Equitrans has inherited from its predecessors.

In order to fully appreciate the Commission’s jurisdiction over these assets, it is important to understand the historical nature of the operation of these assets. Equitable Resources started

utility operation in approximately 1925. At the time of its formation, and for the next several decades, Equitable Resources operated its production, gathering, transmission and distribution facilities as one entity. In the utility industry, this is referred to as a vertically integrated utility. Under the vertically integrated model, public service commissions had control over all aspects of business owned by a public utility. During this period of time Equitable Resources, as a vertically integrated public utility, was obligated to provide retail utility service to any customer that could be served through any of these different facilities. The totality of the Equitable Resources assets were held out for public use.

Eventually, the natural gas industry evolved. Vertically integrated utilities started to “spin-off” different segments of their operations into separate corporate entities for production or gathering or transmission or distribution. Sometimes these different entities remained under one corporate umbrella and sometimes certain portions of the business were sold to other entities or made wholly separate corporate entities. In time, each of these separate industries became subject to regulation by different agencies and rules.

Equitable Resources accomplished this through a series of corporate reorganizations, the first of which occurred in 1988. Equitrans was created through these corporate reorganizations to own and operate what are now known as gathering facilities, which are facilities used to gather or transport natural gas from the production wells to a point of sale. Gas is transported through these gathering facilities for sale in interstate commerce to interstate pipelines. It is also used to serve local customers via utility field taps and local distribution company connections which are directly connected to or served through those gathering lines.

Hope is the local distribution company which now serves the customers attached to those gathering lines, in the area in question. Hope owns and operates the lines and facilities attached to the field tap, including the meter and regulators used to serve the field tap customers. Field tap

customers served by Hope are charged the same rates and charges as are assessed to Hope's distribution system customers for utility service.

Between 1925 and at least 1988, all of the natural gas facilities and assets, including portions of the gathering facilities currently owned and operated by Equitrans, were operated by Equitable Resources as utility assets. During that time, the public at large was unaware as to whether service was being provided through what would eventually be known as a gathering line, a transmission line or a distribution line. They just knew that a line owned and operated by Equitable Resources was available to provide natural gas service to their home or business. Through that historical operation over multiple decades the assets that are now known as gathering facilities were held out for the public use, and the public became dependent upon them for that public use. The public also became dependent on the protections provided by the Commission's exercise of its lawful jurisdiction over facilities which are used and necessary to continue to provide public utility services to West Virginia customers. It would be against the public interest to deny those protections now by undoing the Commission's 100 year history of jurisdiction.

The Commission's exercise of jurisdiction in this matter is consistent with this Court's findings and conclusions in the Boggs case, reasoning which has not been disturbed, much less overturned, in 50+ years of existence. At Syllabus Points 2 and 3 in the Boggs case, this Court held as follows:

Whenever any business or enterprise becomes so closely and intimately related to the public, or to any substantial part of a community, as to make the welfare of the public, or a substantial part thereof, dependent upon the proper conduct of such business, it becomes the subject for the exercise of the regulatory power of the state.

Where the transmission line of a public utility has been used directly to serve retail rural consumers over a long period of time, such use constitutes a dedication of that line to the public service and such facility will continue to be so dedicated and the owner thereof will continue to operate as a public utility unless and until permission is obtained from the Public Service Commission to terminate such status.

As discussed above, the gathering facilities currently owned and operated by Equitrans were used for multiple decades by a public utility, Equitable Resources, to directly serve retail rural customers. This obligates the current owner of the facilities, Equitrans, to continue that dedication to the public service until the Commission authorizes otherwise. That public service obligation may be reflected in the form of continued service to long-standing service locations and accounts, and in the processing of new requests for service.

Four years prior to the Boggs decision, this Court overturned a Commission attempt to exert jurisdiction in Wilhite v. Public Service Commission, 150 W.Va. 747, 149 S.E.2d 273 (1966). At Syllabus Point 3 this Court found:

The test as to whether or not a person, firm, or corporation is a public utility is that there must be a dedication or holding out either express or implied that such person, firm, or corporation is engaged in the business of supplying his or her product or services to the public as a class or any part thereof as distinguished from the serving of only particular individuals; and apply this test the law looks at what is being done, not what the utility or person says it is doing.

In Wilhite, this Court found the entity had not held its gas line out for public use as it only ever supplied service to two customers and was never used to serve the public. Contrast that to Boggs and this situation where the lines in question have been dedicated to the public use for an extended period of time.

In this case, it is clear that the lines and facilities in the area of the Halls has been held out to provide public utility services to the residence in question and to the area in general.

Hope and Equitrans have attempted to avoid their respective obligations to serve the Hall residence by treating it as a totally new customer service connection. In reality, all the Halls have requested is reactivation of gas service at that prior service location. However, even if this was treated as a totally new service request, both Hope and Equitrans are required to receive and

consider reasonable and appropriate requests for new service connections on the existing Equitrans gathering facilities.

This complaint case is not the first time the Commission has dealt with an issue where Equitrans refused to provide access to its system to allow new customers to obtain natural gas utility service. The Commission received a series of complaints in 2010 involving Equitrans' refusal to allow new service connections to its facilities. Those 2010 complaint cases led to the initiation of a General Investigation, Equitable Gas Company, Case No. 10-1385-G-GI.

During the course of that General Investigation, counsel for both Equitable Gas Company and the EQT Corporation, of which Equitrans was a subsidiary at that time, indicated to the Commission that those denials of service were due to a change of leadership within Equitrans and lack of understanding by that leadership of the obligations of Equitrans. They further indicated that Equitrans fully understood its obligations and would allow access to its system in the future. Upon dismissal of that action, the Commission recognized there would be situations in which Equitrans could still deny a tap on its system, and set forth those situations in its April 20, 2011 order.

Since 2010, Equitrans has been using those factors to decide whether to allow access to its system or not. Through those actions, Equitrans has, since 2010, continued to "hold itself to the public use" by allowing any person to connect to its system that requests to connect, except in limited circumstances. Putting aside the historical operation of these facilities, the actions of Equitrans since 2010 are clearly much closer to Boggs than Wilhite.

The following example may illustrate the difference between holding oneself out or not under the Boggs and Wilhite decisions. In a situation wherein there are no other utility customers in the vicinity of a prospective customer, particularly any other customers between that customer and the production well, Equitrans might be well within its rights to deny a tap. While not

completely dispositive, the absence of other utility customers in the immediate area would indicate a lack of historical dedication of that gathering line to the public service. On the surface, pursuant to the Boggs and Wilhite line of cases, it may be properly argued that line had been used solely in a gathering function, and the Commission could not exert any jurisdiction to compel a utility connection to that line. On the other hand, the existence of other utility customers on the line and in the general vicinity of the prospective customer would indicate a historical dedication, or holding oneself out, to the public use. As this Court said in Wilhite, you must look at what is being done, not what the utility or person says it is doing.

In this case, there is no question that the Equitrans line in question has been used to provide utility service to the area in general, and has even been used to provide utility service to the particular service location. It is the same service connection requested by a new customer, after home renovations have been completed by the new owner.

2. The Impact and Effect of the Crawford Affidavit

At the conclusion of the 2008 reorganization of Equitable Resources, there were concerns that the reorganization would prohibit the Commission from continuing to exercise jurisdiction over the production, gathering and transmission facilities of Equitable Resources that the Commission had exercised authority over for years. Parties to that matter wanted to ensure Equitable Resources and its affiliates would continue to provide natural gas service to current and future customers. Anticipating the argument now before this Court, and recognizing the concerns espoused by the parties, the Commission required Equitable Resources to verify the Commission would be able to continue to protect the interests of end users of natural gas on the Equitable system post reorganization. This verification came in the form of the Randall Crawford Affidavit.

The Crawford Affidavit is unnecessary for the Commission to exert jurisdiction in this matter and it did not create jurisdiction where jurisdiction does not exist. As discussed above, the

Commission's jurisdiction is the offspring of the Boggs decision and the historical and on-going operation of these facilities. The Crawford Affidavit was required in anticipation of future jurisdictional arguments and was simply an affirmation of the Commission's jurisdiction, an affirmation Equitrans clearly does not wish to honor.

3. The impact and effect of the Public Service Commission's expanded authority over the common carriage of gas in intrastate commerce over existing natural gas lines- West Virginia Code §24-3-3a.

In addition to the Commission's general authority to regulate the provision of natural gas services by a public utility under W.Va. Code §24-2-1, the Commission also has the express authority under W. Va. Code §24-3-3a to require Equitrans' to transport gas produced by local West Virginia wells over its lines to serve West Virginia customers in intrastate commerce, regardless of whether the gathering facilities are characterized as an intrastate pipeline or an interstate pipeline.

The passage of W. Va. Code §24-3-3a, as adopted by the West Virginia Legislature in 1983, expanded the Commission's authority to regulate the transportation of natural gas by common carriage over both intrastate and interstate pipelines to further intrastate commerce, even if the pipeline in question had not been previously dedicated for a local public purpose.

In pertinent part, W. Va. Code §24-3-3a(b) provides:

(b) The Commission may, by rule or order, authorize and require the transportation of natural gas in intrastate commerce by intrastate pipeline, by interstate pipelines with unused or excess capacity not needed to meet interstate commerce demands or by local distribution companies for any person for one or more uses, as defined by rule, by the commission, in the case of:

- (1) Natural gas sold by a producer, pipeline or other seller to such person....
W. Va. Code §24-3-3a(b)

An “intrastate pipeline” is defined in that same statute as follows:

“Intrastate pipeline” means (i) any utility or (ii) any other person, firm or corporation engaged in natural gas transportation in intrastate commerce to or for another person, firm or corporation for compensation.

W. Va. Code §24-3-3a(a)(1)

“Interstate pipeline” means any person, firm or corporation engaged in natural gas transportation subject to the jurisdiction of the FERC under the Natural Gas Act or the Natural Gas Policy Act of 1978.

W. Va. Code §24-3-3a(a)(2)

“Intrastate commerce” includes the production, gathering, treatment processing, transportation and delivery of natural gas entirely within the State.

W. Va. Code § 24-3-3a(a)(4)

As such, if Equitrans’ gathering line has sufficient excess capacity to carry natural gas from a local well to a customer located along those lines, the Commission has the clear statutory authority to require Equitrans to transport local gas supplies to serve a local utility customer in intrastate commerce, regardless of whether the gathering lines in question are currently in use as intrastate or interstate pipelines. In this case, the gathering line in question is used to deliver natural gas supply to local customers in intrastate commerce. Any excess natural gas produced by those wells are either transported for sale in interstate commerce, or possibly sold to other local distribution company customers in intrastate commerce. Equitrans is entitled to receive compensation for transporting natural gas across those lines in intrastate commerce according to its approved gathering transportation rate, which is the same rate it receives for transporting natural gas over its gathering facilities in interstate commerce.

The transportation of local gas from a local well over Equitrans’ gathering line to serve a local farm tap customer clearly falls within the scope of the Commission’s jurisdiction and authority, and the Commission has the clear statutory authority to require Equitrans to provide transportation service in intrastate commerce to Hope on behalf of Ronald and/or Ashton Hall.

4. The Public Service Commission has the clear statutory authority to require both Equitrans and Hope to take appropriate corrective actions to provide service to the Halls.

In addition to the Commission's clear statutory authority under W. Va. Code §24-3-3a(b) to compel a gathering line to be used to provide utility service from a local well source to a local customer in intrastate commerce, the Public Service Commission has the clear power and jurisdiction to require both Hope and Equitable to take appropriate corrective action to reverse an unreasonable denial of service, pursuant to the provisions of W. Va. Code §24-2-7.

In pertinent part, W. Va. Code §24-2-7(a) provides:

- (a) Whenever, under the provisions of this chapter, the commission shall find that any regulations, measurements, practices, acts or service to be unjust, unreasonable, insufficient or unjustly discriminatory, or otherwise in violation of any provisions of this chapter, or shall find that any service is inadequate or that any service which is demanded cannot be reasonably obtained by, the commission shall determine and declare, and by order fix reasonable measurement, regulation, acts, practices or services, to be furnished, imposed, observed and followed in the state in lieu of those found to be unjust, unreasonable, insufficient or unjustly discriminatory, inadequate or otherwise in violation of this chapter, and shall make such other order respecting the same as shall be just and reasonable.

The Commission's Administrative Law Judge found that Hope's and Equitrans' denial of service to the Halls was not supported by the record. The ALJ order required Equitrans to make its line available to Hope to provide the requested service. (In truth, this required no affirmative action on Equitrans' part, since the field tap already existed.) Hope was required to install a new meter and initiate the service to the customer. The Commission properly affirmed and adopted that ALJ Decision.

Any continued refusal to extend service to the Hall residence at 3471 8 Mile Ridge Road is frankly unreasonable and discriminatory. In the opinion of the Consumer Advocate Division, any continued denial of service to the Halls should be subject to sanctions and penalties for violation of a clear and unambiguous Commission order.

5. The filing of an FERC petition by Equitrans to abandon or transfer any or all of the gathering facilities in West Virginia does not divest the West Virginia Public Service Commission of any of its statutory authority, duty and obligation to protect the legitimate interests of local distribution customers and field tap customers whose service are dependent on the continued operation of those gathering facilities.

FERC's jurisdiction over natural gas lines is set forth in Chapter 15B of the Natural Gas Act, specifically 15 U.S.C.A. § 717(b) which provides:

The provisions of this Act [*15 USCS §§ 717 et seq.*] shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, and to the importation or exportation of natural foreign commerce and to persons engaged in such importation or exportation, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

By its own unambiguous terms, the applicable FERC statute provides that FERC's jurisdiction over natural gas lines does not apply to the intrastate sale of natural gas or production or gathering of natural gas, or the sale of natural gas in intrastate commerce.

Instead, Congress expressly reserved the regulation of intrastate natural gas transportation and intrastate commerce to the states. In pertinent part, 15 U.S.C §717 (c) expressly recognizes and reserves to the states the right and authority to regulate the intrastate sale and transportation of natural gas in intrastate commerce, as follows:

- (c) Intrastate transactions exempt from provisions of chapter; certification from State commission as conclusive evidence.

The provisions of this chapter shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a state if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale,

provided that the rates and service of such person and facilities be subject to regulation by a State commission. **The matters exempted from the provisions of this chapter by this subsection are declared to be matters primarily of local concern and subject to regulation by the several States.** (emphasis added).

The Public Service Commission of West Virginia has instituted reasonable and appropriate regulation of the local intrastate gas transportation services provided by Equitrans to provide safe and reliable gas utility services to affected West Virginia customers, consistent with the scope of authority which has been expressly reserved to the states, and the authority which has been expressly granted to the Commission by the West Virginia Legislature. The statutory scheme established by the West Virginia legislature, and the accompanying rules and orders issued by the West Virginia Public Service Commission are a legitimate exercise of the authority which has been expressly reserved by the states to regulate intrastate commerce in the sale and transportation of natural gas in interstate commerce, and to protect the associated local interests of West Virginia utility customers.

V. CONCLUSION

This Court in the Boggs decision cited a previous decision in Preston County Light and Power Company v. Renick, 145 W.Va. 115, 113 S.E.2d 378, noted “The well established general rule is that when a public utility has undertaken the rendition of public service it cannot discontinue such service at will but is under a duty to continue its service to the public.”

Equitable Resources undertook the rendition of public service to local utility and field tap customers in West Virginia who were connected to lines that are now identified as part of Equitrans’ gathering systems. Equitrans, as the corporate successor to Equitable Resources, now

has the duty to continue that service, and to properly receive and process new service tap requests.

The Commission clearly has the jurisdictional power and authority to address the matters raised by the original complaint, and impose the relief granted by those orders.

For all of the reasons set forth above, the Consumer Advocate Division of the West Virginia Public Service Commission respectfully requests that the Court summarily reject the Petitioner's appeal.

Respectfully submitted this 31st day of May, 2022.

CONSUMER ADVOCATE DIVISION
OF THE PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA

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CERTIFICATE OF SERVICE

I, Robert F. Williams, Director of the Consumer Advocate Division for the Public Service Commission of West Virginia, do hereby certify that a copy of the foregoing "Amicus Curiae Brief of the Consumer Advocate Division of the Public Service Commission of West Virginia", filed in support of the Respondent Commission's Order of March 16, 2022 in Case No. 22-0293, has been served upon the following parties of record by First Class United States Mail, postage prepaid this 31st day of May, 2021:

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