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BEFORE THE
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

EQUITRANS, L.P.

Petitioner,

vs.

No. 22-0293

PUBLIC SERVICE COMMISSION OF WEST
VIRGINIA, RONALD HALL, ASHTON HALL,
and HOPE GAS, INC., doing business as
DOMINION ENERGY WEST VIRGINIA,

Respondents.

**BRIEF OF PEOPLES GAS WV LLC
AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT
HOPE GAS, INC., DOING BUSINESS AS DOMINION ENERGY WEST VIRGINIA**

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STATEMENT OF INTEREST OF THE *AMICUS CURIAE*¹

Peoples Gas WV LLC ("PGWV") is a public utility in West Virginia, subject to the jurisdiction of the Public Service Commission of West Virginia ("Commission"), and provides natural gas service to approximately 12,837 residential, commercial, and industrial customers in fifteen (15) counties in the state, including approximately 2,200 customers served by the Equitrans LP ("Equitrans") Gathering System (1,636 field tap customers and 566 customers behind delivery meters). PGWV is a party to Case Nos. 20-0329-G-P, 20-0454-G-GI and 20-0660-G-X, which have been consolidated and are pending before the Commission. The Commission proceedings address the proposed abandonment by Equitrans of the Gathering System and the potential sale of the Gathering System to Big Dog Midstream, LLC ("Big Dog"). Access to services provided on the Gathering System and supplies of natural gas delivered to PGWV from the Gathering System are essential in the provision of public utility service to the customers of PGWV. An essential issue presented in the current appeal and in the consolidated Commission cases set forth above is one of the nature and existence of jurisdiction of the Commission over Equitrans as it relates to the Gathering System.

PGWV's interest in the underlying Commission matters relates to the issue of the Commission's jurisdiction and potentially harmful effect of an abandonment of the Gathering System by Equitrans on customers of PGWV. If the Gathering System is

¹ Pursuant to West Virginia Rule of Appellate Procedure 30(e)(5), the *Amicus Curiae*, by counsel, represents that this brief is a revision to the "Joint Response of Dominion Energy West Virginia, Peoples Gas WV, LLC and Mountaineer Gas Company To Petition for Writ of Prohibition" that was filed in Case No. 22-0229 pending before this Court. No counsel or party made a monetary contribution specifically intended to fund the preparation or submission of this Brief. Finally, no other person who would need to be identified under Rule 30(e)(5) made a monetary contribution towards this Brief.

abandoned and PGWV can no longer provide service to approximately 2,200 of its customers, PGWV and its customers will be exposed to the cost of arranging alternative methods of service or participation in the cost to convert some or all of the 2,200 customers to other sources of supply, such as propane or electricity. In a report filed on October 30, 2020, in Case No. 20-0329-G-P, titled *Peoples Gas WV, LLC's Recommendations on Continued Provision of Service to Field-Tap and Distribution Customers that Rely Solely on Equitrans Gathering System*, PGWV estimated the total conversion costs to be \$23.9 million and the upgrade and integration of such facilities into the PGWV system would cost more than \$180 million. These costs will ultimately be recovered through the rates paid by the remaining utility customers served by PGWV. Rates will also be revised to reflect the loss of more than \$900,000.00 in annual revenues provided by PGWV customers served by the Equitrans Gathering System. PGWV may effectively be bound by a judgment in this action regarding the Commission's jurisdiction over Equitrans. PGWV's interests as a public utility that receives significant deliveries of baseload supplies of natural gas from the Gathering System and whose customers are being served on or from the Gathering System are not adequately represented by any of the current parties in this matter.

An *amicus curiae* brief would benefit the court by bringing attention to the significance and implications of the jurisdictional issues raised by Equitrans in the present case in which the Commission ordered Equitrans to grant a tap on the Gathering System. Rather than challenging the Commission action in a limited fashion to address a tap to serve the Halls, Equitrans' Petition for Appeal asks this Court to broadly address the Commission's jurisdiction over the Gathering System. On page 2

of the Petition for Appeal, Equitrans writes, "The jurisdictional issue on appeal in this case is the same as that pending in *State of West Virginia ex rel. Equitrans, L.P., and Big Dog Midstream, LLC v. Public Service Commission of West Virginia*, Case No. 20-0229, arising out of various Commission orders in a Commission General Investigation and other matters pending before the Commission, including *Hall*."

INTRODUCTION AND SUMMARY OF ARGUMENT

The Commission has jurisdiction over Equitrans and the Gathering Facilities as a public utility or, alternatively, as an intrastate pipeline in order to protect the public—the ultimate purpose of the Commission's statutory authority and jurisdiction. The Commission's jurisdiction is appropriate pursuant to its statutory authority, established case law, and pursuant to the Crawford Affidavit², which binds Equitrans.

ARGUMENT

A. EQUITRANS AND ITS GATHERING FACILITIES ARE SUBJECT TO THE COMMISSION'S REGULATION AS PUBLIC UTILITIES

The decisions of this Court establish beyond dispute that an enterprise which is engaged in various activities other than public service activities can still be regarded as a "public utility" subject to the Commission's jurisdiction with respect to such of its

² This was an affidavit executed by Equitable Resources Senior Vice President and President of Midstream and Distribution making representations regarding actions the company agreed to take including that it would not abandon gathering lines without Commission approval and has become known as the "Crawford Affidavit."

activities as do constitute public service activities.³ Equitrans, like its predecessor Equitable Resources, Inc. ("ERI"), operates its Gathering Facilities as a public utility to the extent those facilities are the sole source of gas supply for thousands of end-use public utility customers (at locations where only minor intervening LDCs⁴ facilities; i.e., a meter and perhaps some gas conditioning equipment lie between Equitrans' pipeline(s) and the end-use customer);⁵ and, thus, are dedicated to the public service and have been so dedicated for many years. That is the essential test of being a public utility subject to the Commission's jurisdiction, and Equitrans and its Gathering Facilities, notwithstanding Equitrans' arguments to the contrary, plainly pass that test. As this Court has stated in determining Commission jurisdiction over public services, and, thus, over public utilities and in opposition to Equitrans' arguments: "to apply this test the law looks at what is being done, not to what the utility or person says it is doing."⁶

Equitrans argues that the Commission does not have jurisdiction over its Gathering Facilities because it is not a public utility. In the main, the Commission's jurisdiction is limited to "public utilities," which is defined in W. Va. Code §24-2-1. Not only do Equitrans' Gathering Facilities fit squarely within the definition of "public utility;"

³ *Preston County Light & Power Co. v. Renick*, 145 W.Va. 115, 113 S.E.2d 378 (1960); *Wingrove v. Commission*, 74 W.Va. 190, 81 S.E.2d 734 (1914).

⁴ LDCs refers to local distribution companies, which include reference in this case to PGWW, Hope Gas, Inc., and Mountaineer Gas Company.

⁵ While the Intervening LDCs have some equipment between the end-use customer and the Equitrans' facilities, but for the Equitrans' facilities and their transportation and delivery of natural gas, those public, end-use customers cannot be physically served with natural gas. Equitrans' arguments seek to minimize if not ignore these crucial facts in order to minimize its crucial role in providing this "public service."

⁶ Syl. pt. 3, *Wilhite v. Pub. Serv. Comm'n*, 150 W. Va. 747, 149 S.E.2d 273 (1966)

such status is also supported by decades-old case law, which is still in effect and has not been reversed.

1. Equitrans Operates Its Gathering Facilities as a Public Utility under W. Va. Code §24-2-1.

A "public utility" means

any person or persons, or association of persons, however associated, whether incorporated or not, including municipalities, engaged in any business, whether herein enumerated or not, which is, or shall hereafter be held to be, a public service.

Under that statute, the jurisdiction of the Commission extends to all public utilities in this state and includes any utility engaged in any of the following public services:

...

(2) **Transportation of oil, gas, or water by pipeline;**

...

(7) **Supplying water, gas, or electricity by municipalities or others: (A) *Provided*, That natural gas producers who provide natural gas service to not more than 25 residential customers are exempt from the jurisdiction of the commission with regard to the provisions of the residential service; (B) *Provided however*, That upon request of any of the customers of the natural gas producers, the commission may, upon good cause being shown, exercise authority as the commission may consider appropriate over the operation, rates, and charges of the producer and for the length of time determined proper by the commission...**⁷

Clearly, the Legislature found that the Commission has broad jurisdiction over natural gas service in various forms - - the transportation of gas by pipeline, the supply of natural gas, and, under certain circumstances, over operation, rates, and charges of natural gas producers. The purpose of that Commission jurisdiction is beyond dispute: in this case, to protect the public receiving gas service.

⁷ W.Va. Code §24-2-1 (emphasis added).

Equitrans' Gathering Facilities both transport natural gas and supply natural gas to over 3,000 residential customers and have done so for decades. However, Equitrans claims that because its gathering facilities serve a gathering function, the public service those lines provide is exempt from the Commission's jurisdiction by reason of a rule in W.Va. Code R. 150-16-2.10 that the Commission promulgated under W.Va. Code §24-3-3a. The "exemption" in the transportation rules is not a waiver of jurisdiction over gathering lines under W. Va. Code §24-2-1. The exemption applies narrowly to the Commission's transportation rules and does not preempt the Commission's broad statutory authority set forth above and as discussed in applicable long-standing case law. The Commission's transportation rules and the gathering line exemption therein were promulgated pursuant to the authority given to it in W.Va. Code §24-3-3a, which states as follows:

(b) The commission may by rule or order, authorize and require the transportation of natural gas in intrastate commerce by intrastate pipelines, 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; or

(2) Natural gas produced by such person.

(c) For reasons of safety, deliverability or operational efficiency the commission may, in its discretion, by rule or order, exclude from the requirements of this section any part of any pipeline solely dedicated to storage, or gathering, or low-pressure distribution of natural gas.

The authority above allows the Commission to require, by rule or order, certain types of transportation by pipelines, which resulted in the Commission's transportation

rules. Subsection (c) of that statute applies only to that statutory section and limits the Commission's discretion to exclude from that statutory section pipelines solely dedicated to storage, gathering or low-pressure distribution of natural gas AND then only for reasons of safety, deliverability or operational efficiency. Equitrans Gathering Facilities are not solely dedicated to gathering functions. They are also essential to the provision of natural gas service to thousands of residential customers. Therefore, neither the statutory authority to exempt under W.Va. Code §24-3-3a nor the Commission's rulemaking exemption thereunder can apply to the abandonment of customers served by Equitrans Gathering Facilities or the transfer of such Facilities to Big Dog. Regardless of whether Equitrans Gathering Facilities are exempt from the Commission's transportation rules, they are still subject to the Commission's jurisdiction that falls outside of those rules and within its statutory authority - - the jurisdiction over the transportation and supply of natural gas to those 3,000 customers, pursuant to W.Va. Code §24-2-1.

Further, while the Commission's jurisdiction clearly extends to entities that have been defined as public utilities (i.e., those providing a public service), the Commission's jurisdiction has also been expanded by the Legislature to entities that are not always seen to be utilities. For example, W. Va. Code §§24-2-11 and 24-2-11a apply not only to public utilities but also to any persons or corporations. In W. Va. Code §24-1-1(e)(3), the Legislature provides that "[i]n carrying out the provisions of this section⁸ the Commission shall have jurisdiction over such persons, whether public utilities or not, as

⁸ While W.Va. Code §24-1-1(e)(3) refers to reports to the Legislature, the Legislature specifically mentioned the Commission having expansive jurisdiction related to "carrying out the provisions of this section" which appears to refer to the entirety of W.Va. Code §24-1-1.

may be in the opinion of the Commission necessary to the exercise of its mandate. . . .” Pursuant to W.Va. Code §24-1-1, therefore, the Commission’s jurisdiction over Equitrans exists whether or not it is a public utility *per se*.

2. Equitrans Gathering Facilities Are a Public Utility Under Established Case Law.

This Court decided, decades ago, that gathering facilities that have provided natural gas service to residential customers for many years, like the Equitrans’ Gathering Facilities, are public utilities and subject to the Commission’s jurisdiction. Specifically, this Court held in *Boggs v. Public Service Commission*,⁹ that, when transmission and gathering lines have 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, and the Commission has jurisdiction over those lines and the services they render. There is no dispute that Equitrans’ Gathering Facilities have been used to serve customers for a long period of time. Like Equitrans, the gathering lines in *Boggs* were previously owned by a distribution company that provided natural gas service to residential customers. After the distribution assets were sold, *Boggs* continued to own gathering lines which continued to serve customers - - like the Equitrans Gathering Facilities. The *Boggs* decision is rooted in the fact that a “public service” had been provided for years and, thus, the gathering and transmission lines that continued to serve customers were considered a public utility. Specifically, in Syllabus Point 1 of *Boggs*, this Court held that:

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

⁹ 154 W.Va. 146, 174 S.E.2d 331 (W.Va. 1970)

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.

That statement was made over fifty years ago, but its significance and applicability is no less today than it was then. The facts in *Boggs* are strikingly similar to the facts involving Equitrans before the Commission. The Court in *Boggs* summarized the impact upon customers reliant upon service by Boggs if the Court would have agreed that the Commission was without jurisdiction to regulate Boggs as follows:

If Boggs is not operating under the jurisdiction of the Public Service Commission he is at liberty, subject to the terms of the contract in the instant case, to charge for his gas whatever price he deems necessary to bring him a return in any amount to which he believes he is entitled. However, if Boggs, in the circumstances of this case, is subject to the Commission's jurisdiction, then the price he charges for gas is a concern of that Commission and is subject to regulation. In the latter event, the matters of which Boggs complains, that is, the losses he sustains by reason of defective lines, faulty meters and other causes, may be presented in a proper proceeding before the Commission. If proved, the Commission will consider such matters in adjusting rates so as to allow a just and reasonable return on his investment.¹⁰

While the focus of the jurisdictional issue in *Boggs* was on Boggs' proposed unilateral increase in rates to customers served by his gathering facilities, and the focus in this case is the proposed abandonment of service to customers served through Equitrans' Gathering Facilities and the transfer of such facilities to Big Dog without Commission review, the potential impact on West Virginia customers is every bit as severe, as discussed in more detail below.

¹⁰ 154 W.Va. 146, 174 S.E.2d 335 (1970)

Equitrans argues that the promulgation of the Commission's transportation rules, which includes the gathering line exemption, somehow overrules the *Boggs* decision. No regulatory agency has the authority to overrule a decision of this Court and the *Boggs* decision has not been reversed. Moreover, as already stated, the gathering line exemption applies only with respect to the Commission's transportation rules, not to the Commission's statutory jurisdiction over transporting and supplying natural gas. Finally, an administrative agency does not define the scope of its jurisdiction through promulgation of rules and regulations; an agency's jurisdiction is defined by statute.

Equitrans also argues that, because it has no retail utility customers, it is not a public utility. Again, this Court has already determined that a company in Equitrans' position can be a public utility. In *Preston County Light and Power Co. v. Renick*, this Court held that an electric company that devoted certain facilities owned and operated by it to the distribution of electricity to the public for a period of several years, subsequently transferred its transmission and distribution facilities to another company, and after such transfer continued to devote facilities to the sale of electricity to that other company for sale and distribution by the other company to the general public *is*, to the extent that it generates and sells electricity which the other company sells and distributes to the general public, a public utility, and, as such, is subject to the jurisdiction of the Commission.¹¹ That is essentially the situation that exists with respect to Equitrans and its gathering lines. Those lines are used to deliver gas to minor facilities owned by the LDCs. Under the Court's analysis in *Preston County*, the Equitrans gathering lines can be treated as a public utility providing a public service.

¹¹ *Preston County Light & Power Co. v. Renick*, 145 W. Va. 115, 113 S.E.2d 378 (1960).

3. Under the Regulatory Scheme Created by the West Virginia Legislature, the Commission Can Hold Equitrans to the Commitments made in the Crawford Affidavit.

Equitrans disparages its own sworn promises to the Commission and the public it protects in Equitrans' Crawford Affidavit.¹² But the Crawford Affidavit was essential to the Commission's approval of the reorganization of ERI, an acknowledged public utility.¹³ ERI, the direct corporate parent of Equitrans, was willing to make commitments on behalf of itself and all of its subsidiaries and affiliates and their successors that expressly applied to the gathering lines of all of those entities operating in West Virginia. The key relevant commitment was that none of those entities would discontinue service to "any customers served by a mainline tap on a production, transmission or gathering line or facility" of any of those entities without first obtaining the Commission's approval. Equitrans and its gathering lines were expressly bound by the terms of the affidavit of Randall Crawford. But now, fourteen (14) years after the Commission's approval of the ERI reorganization, which was conditioned upon the terms of the Crawford Affidavit, Equitrans argues that the affidavit that ERI willingly gave was meaningless and ineffective. If Equitrans is correct, the inescapable corollary is that the reorganization of ERI, which was conditioned on the commitments made in the Crawford Affidavit, was also ineffective.

¹² Randall Crawford was an Equitable Resources Senior Vice President and President of Midstream and Distribution.

¹³ Commission Orders of February 29, 2008 and May 16, 2008 in Case No. 07-0098-GT-G-PC; App. at 1184.

B. IN ADDITION TO BEING PUBLIC UTILITIES, PETITIONERS AND THE GATHERING FACILITIES ARE ALSO SUBJECT TO THE COMMISSION'S JURISDICTION AS INTRASTATE PIPELINES.

Regardless of whether the Petitioners are "public utilities", their use of the Gathering Facilities makes them each subject to regulation by the Commission as an intrastate pipeline. W. Va. Code §24-3-3a, discussed above. This statute bestows upon the Commission the power, by rule or order, to authorize and require transportation of gas by intrastate pipelines and authorized regulation of their transportation rates and charges. Its companion, W. Va. Code §24-2-11(i), permits the Commission to issue a certificate of public convenience and necessity for intrastate pipelines to engage in the transportation of such gas in intrastate commerce.

An "intrastate pipeline" includes "any... person ... engaged in natural gas transportation in intrastate commerce to or for another person ... for compensation."¹⁴ Regardless of the classification of the pipeline, the Commission has jurisdiction over the use of such lines to transport gas for others for a fee in West Virginia.¹⁵ Equitrans admits that it transports gas through a pipeline in intrastate commerce to or for another person:¹⁶ Equitrans claims it "does not provide gas utility distribution service, but instead provides gathering service to its customers."¹⁷

¹⁴ W.Va. Code §24-3-3a (a)(1).

¹⁵ Equitrans presently charges compensation for its service. Its current gathering rate of \$0.5500 per Dth under Rate Schedule AGS/Equitrans Gathering System is shown in its FERC Gas Tariff and is a matter of public record. See Equitrans, L.P. FERC Gas Tariff, First Revised Volume No. 1, Section 4.2 STATEMENT OF RATES Transportation Rates ITS, AGS Products Extraction, available at <https://customers.egm-midstreampartners.com/en/IPWS-Equitrans/Informational%20Postings/Tariff/Entire%20Tariff.aspx> (accessed May 4, 2022).

¹⁶ "The Gathering Facilities gather and transport gas from conventional, low-pressure wells in northern West Virginia to local and interstate markets. App. At 167. Equitrans does not own the [Footnote continued on next page]

Equitrans, with respect to its West Virginia Gathering Facilities, is an intrastate pipeline under state law and subject to state regulation by the Commission. Similarly, if the facilities are transferred to Big Dog, Big Dog will be an intrastate pipeline by its own admission. "It has not yet commenced operations, but upon FERC approval, Big Dog will continue operating the Gathering Facilities to perform a gathering function in a manner similar to Equitrans. App. at 384, 414-415."¹⁸ While Big Dog has apparently not yet established rates, it undoubtedly will not transport gas free of charge.

Petitioners assert that "Only the West Virginia Legislature may vest the Commission with jurisdiction, and that jurisdiction is limited to the regulation of public utilities."¹⁹ W. Va. Code §§24-3-3a and 24-2-11(i) clearly define "intrastate pipelines" and make them subject to Commission regulation. Petitioners also attempt to dodge jurisdiction as an intrastate pipeline by pointing to Commission Rule 150-16-2.10.²⁰ That argument is wrong for several reasons.

First, as discussed above, it is axiomatic that the Commission cannot, by rule, disclaim the statutory grant of jurisdiction over intrastate pipelines. Second, the Commission recognized that, given the cooperation in the industry and regulation of interstate pipelines by FERC, there was no need to impose onerous regulatory

gas gathered through the Gathering Facilities, nor does it own the wells producing the gas." App. at 380. See Petition for Writ at p. 3.

¹⁷ *Id.* See also Petition for Writ at 18 ("[Equitrans] does not sell gas, it does not produce gas, and it does not even own the gas gathered by its Gathering Facilities.").

¹⁸ Petition for Writ at p. 5. See also Petition for Writ at p. 18 ("Similarly, because Big Dog Midstream will operate the Gathering Facilities in a similar manner....").

¹⁹ Petition for Writ at p. 11.

²⁰ That rule states "Gathering facilities shall not be considered to be either public utilities or intrastate pipelines."

requirements; rather, in the exercise of what has become known as “light-handed regulation,” the Commission reserved the right to act in appropriate cases. That is precisely what is happening in this case. The Petitioners are trying to escape any regulatory oversight of their monopolistic activities with the potential for dire consequences to the producers, public utilities, and consumers dependent upon them, and the Commission has rightfully acted to protect the public interest.

Finally, without any record or legal support, Petitioners’ attempt to escape classification as an intrastate pipeline on the basis that the facilities Equitrans operates cross state lines, making them interstate and not “solely” intrastate.²¹ Petitioners’ argument for a regulatory gap is unsupportable. Furthermore, Equitrans also admits that it delivers gas from wells in West Virginia to utilities in West Virginia.²² The Commission may not be able to regulate that part of Equitrans’ operations occurring in Pennsylvania, but that does not mean that the Commission is powerless to regulate the activities that are occurring in West Virginia.

C. THE ADVERSE CONSEQUENCES AND IMPACTS IF PETITIONERS’ ARGUMENT IS ADOPTED

In addition to the demonstrated fact that the Commission has statutory jurisdiction over Equitrans’ Gathering Facilities, it is important for the Court to understand why that Commission jurisdiction is not only appropriate, but crucial to the “public service” rendered by those facilities to West Virginians. If the Petitioners succeed in creating a gap between state and federal regulations, the results would be

²¹ Petition for Writ at pp. 20-21.

²² App. At 167

disastrous for the end-use gas customers receiving a “public service” through Equitrans and its Gathering Facilities. The Gathering Facilities are the sole source of gas supply for the subject end-use customers. Without Commission jurisdiction and regulatory oversight, Big Dog could simply refuse to continue to serve those customers without any Commission involvement.

Lack of oversight regulation would permit Equitrans to sell its aged pipelines in unknown but likely dubious condition to an unqualified and undercapitalized buyer who would have no obligation to maintain its pipelines or to restore lost service even in the coldest of winters. Petitioners are steadfastly trying to avoid disclosing any facts or making any commitments along those lines.²³

The record before the Commission shows that the welfare of the LDCs’ customers served through the Gathering Facilities is directly at stake in the case of either the abandonment or the transfer of these facilities to Big Dog. Over 3,000 customers of Peoples, Hope, and Mountaineer are served through the Gathering Facilities and will be impacted by this Court’s decision. These customers will be exposed to the cost of arranging alternative methods of service or participation in the cost to convert some or all of the over 3,000 customers to other sources of supply, such as propane or electricity. The LDCs have estimated the total conversion costs to be approximately \$43.5 million. These costs do not include the extensive operational costs that will be needed to support and complete the abandonment of that many customers, which is estimated to take multiple years and require a multitude of contractors and

²³ Is Big Dog qualified to operate a pipeline system? Equitrans states that Big Dog was formed in 2021 for the purpose of owning and operating the facilities Equitrans seeks to sell and “has not yet commenced operations.” Petition for Writ p. 5

workers managing the process continuously until it is completed, nor the substantial legal costs associated with litigation challenges that will most likely be faced.

Further, while the cost of conversion is a significant consideration, the resources and time required to convert customers would also be substantial. Assuming *arguendo* that there are a sufficient number of qualified contractors to perform conversion work (which may not be a an accurate assumption), assuming conversion of four customers per month (which also may not be feasible depending upon the resources and vendors available), Hope alone estimated that it would take 202 months, or approximately 16.8 years, to complete the conversion of its 808 customers, and Hope's customers are less than a third of the total customers served through the Gathering Facilities. These costs would ultimately be recovered through the rates paid by the remaining utility customers served by the LDCs and LDCs' rates would also have to be revised to reflect the loss of annual revenues provided by customers served through the Equitrans' Gathering Facilities.

Without the Commission's exercise of its jurisdiction to investigate and adjudicate the proposed actions by Equitrans and Big Dog, the citizens of West Virginia served by the Gathering Facilities will be left to the whim of the Petitioners. Two recent instances provide stark examples of the reality of this threat to West Virginia gas customers that Equitrans and Big Dog pose by their attempt to avoid the jurisdiction of the Commission.

In the first instance, Equitrans proceeded with abandoning certain portions of its Gathering Facilities serving Peoples customers without obtaining required regulatory approvals from the Commission, after it admitted to needing such approval. On June 1, 2021, Equitrans informed the FERC that it was going to abandon certain "Non-

Certificated Gathering Facilities” in Wetzel County effective July 1, 2021 “for safety reasons due to third-party longwall mining activity”.²⁴ Equitrans clearly recognized, and committed to, its obligation to obtain the approval of the Commission for the abandonment of such facilities.²⁵ But in its June 1, 2021 notice to the FERC, Equitrans reneged on its commitments to both Peoples and the Commission. Thus, without approval by the FERC or the Commission, and without any determination being made by either regulatory body of the responsibility for conversions and the extent thereof, Equitrans accomplished a partial abandonment of facilities serving customers of Peoples on the Wetzel County lines who were converted to propane by Peoples. Peoples estimated that the cost to convert its remaining customers at risk of abandonment would be as much as \$26.4 million dollars.²⁶

A second recent example of the justification for the Commission’s exercise of its role to protect West Virginia natural gas customers was reported by the Staff of the Commission in an April 26, 2022, Initial Staff Internal Memorandum filed in Case No. 22-0397-G-C, *Ronald Leek v. Hope Gas, Inc. dba Dominion Energy West Virginia and*

²⁴ Appendix at 356 and PGWV’s June 14, 2021 Response to the Commission’s June 8, 2021 Order App. at 725.

²⁵ Equitrans provided notice of proposed longwall mining in Wetzel County in an October 15, 2019 letter to Peoples. In that letter, more than eighteen (18) months before the Wetzel County abandonment, Equitrans stated:

Upon completion of the longwall mining activity, Equitrans[sic] will determine whether it will remediate the impacted facilities. ***If Equitrans determines at that time not to remediate, consistent with the Crawford Affidavit, it will, as necessary, file a request a request [sic] to abandon the impacted facilities with the Public Service Commission of West Virginia.***

²⁶ See PGWV’s September 9, 2021 Response to the Commission’s August 11, 2021 Order; App. at 811. The total cost of conversion has fluctuated with changes in the projected number of anticipated conversions; as reflected in the amount stated in PGWV’s Motion to Intervene in Case No. 22-0229.

Equitrans L.P. The *Leek* case was filed on April 20, 2022 alleging unsafe conditions related to gas entering the Complainant's house during low pressure events. The Memorandum states that, during the Staff's investigation of the Complaint, the Staff observed that well maintenance and gathering line maintenance appeared to be lacking. The Memorandum further states that, when the Staff member contacted an Equitrans Pipeline Supervisor about when the line would be repaired and put back into service, he was informed that the line would not be repaired and put back into service "because Big Dog Midstream approved the abandonment of the line and did not want it repaired." Assuming the statements made by the Staff of the Commission are accurate, this event confirms the problems facing the customers served through Equitrans' Gathering Facilities if Equitrans and Big Dog should prevail in their efforts to avoid regulatory scrutiny.

If the Petitioners are successful in this action, the Equitrans-Big Dog scenario will not be the last one West Virginia experiences. In *Columbia Gas Transmission*, FERC Docket No. RP20-1060, FERC recently approved a settlement that requires Columbia to address its aging low-pressure pipeline system.²⁷ Columbia must determine whether to abandon by sale, physically remediate, or permanently abandon 1,054 miles of low-pressure pipelines in Pennsylvania and West Virginia, but primarily in West Virginia. In the same spirit of compromise that was the basis for light-handed regulation by the Commission, Columbia and its customers agreed in writing in that settlement to a multitude of terms and conditions designed to protect LDCs, producers and their respective customers upon any sale of those pipelines. Such protections do

²⁷ As evidenced by its FERC filing, Equitrans is also trying to abandon its Gathering system. App. at 156.

not exist in the Equitrans-Big Dog proposed transaction and Equitrans is seeking to prevent the Commission from addressing these critical issues and imposing terms and conditions to protect the public service being rendered through the Gathering Facilities. Preventing the Commission from carrying out its statutory purpose to protect the public service rendered to West Virginians will have serious adverse impacts on producers who are producing gas, customers buying gas from those producers, mainline tap customers, local distribution companies, and the thousands of residential, commercial and industrial customers they serve.

The Court in *Boggs* aptly observed that the Commission was created to safeguard and serve the interests of the public from the actions of entities like Equitrans and Big Dog.²⁸ Notwithstanding the Petitioners' arguments to the contrary, just as in *Boggs*, the Commission finds its jurisdiction on the basis that the Gathering Facilities continue to be devoted to the public service. *Id.*

CONCLUSION

For the reasons set forth herein, Peoples Gas West Virginia LLC respectfully requests that this Court issue an order determining that the Commission has jurisdiction in this matter.

Amicus Curiae
Peoples Gas WV LLC

By Counsel

²⁸ 154 W. Va. 154, 174 S.E.2d 336.



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May 31, 2022

BEFORE THE
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

EQUITRANS, L.P.

Petitioner,

vs.

No. 22-0293

PUBLIC SERVICE COMMISSION OF WEST
VIRGINIA, RONALD HALL, ASHTON HALL,
and HOPE GAS, INC., doing business as
DOMINION ENERGY WEST VIRGINIA,

Respondents.

CERTIFICATE OF SERVICE

I, John R. McGhee, Jr., counsel for Peoples Gas WV LLC, do hereby certify that copies of the foregoing "Brief of Peoples Gas WV LLC As *Amicus Curiae* In Support of Respondent Hope Gas, Inc. doing business as Dominion Energy West Virginia" have been served upon the following parties on this 31st day of May, 2022, in the manner so indicated:

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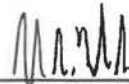
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