

IN THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA
CHARLESTON



EQUITRANS, LP,

Petitioner,

v.

No. 22-0293

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA; and
Ronald Hall, Ashton Hall, and Hope Gas, Inc., doing business as,
Dominion Energy West Virginia,

DO NOT REMOVE
FROM FILE

Respondents.

STATEMENT OF THE RESPONDENT
PUBLIC SERVICE COMMISSION OF WEST VIRGINIA
OF ITS REASONS FOR THE ENTRY OF ITS ORDER OF MARCH 16, 2022
IN COMMISSION CASE NO. 20-0994-G-C

PUBLIC SERVICE COMMISSION
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**TO THE HONORABLE JUSTICES OF THE SUPREME COURT
OF APPEALS OF WEST VIRGINIA:**

The Respondent Public Service Commission of West Virginia (“PSC” or “Commission”) hereby tenders for filing, pursuant to W. Va. Code § 24-5-1, its reasons for the entry of its March 16, 2022 final order in *Ronald L. Hall, et al, v. Hope Gas, Inc., dba Dominion Energy West Virginia, et. al.*, Case No. 20-0994-G-C (“Complaint Case”), that is the subject of the Petition for Appeal (“Petition”) filed by Equitrans, L.P. (“Petitioner” or “Equitrans”) regarding the PSC’s jurisdiction over the Petitioner and the natural gas pipeline gathering system currently owned and operated by Equitrans, through which approximately 3,500 utility customers in rural areas of West Virginia receive natural gas service and which provides transportation service for rural gas producers.

I. STATEMENT OF THE CASE

In this case, the Petitioner claims the PSC exceeded its legitimate authority by improperly exercising jurisdiction over the Petitioner and its gathering system through its issuance of the March 16, 2022 final order. (Petition 2-22, Apr. 15, 2022.) In the underlying case, the PSC, acting within its authority under the law, properly exercised jurisdiction over Petitioner with regard to its refusal to make its gathering pipeline (“Line H13087”) available for a local distribution company to place a meter on the line, in order to supply natural gas to Ronald Hall and Ashton Hall (“the Halls”) through a field tap¹ on Equitrans’ Line H13087.

Petitioner’s gathering system, including Line H13087, is the subject of separate consolidated proceedings that involve a PSC general investigation into the continuation of natural gas service to over 3,000 field tap customers and rural areas dependent on Equitrans’ gathering system to supply and transport natural gas.² The PSC ordered Petitioner on May 20, 2020,³ and on August 19, 2020,⁴ not to discontinue natural gas service on lines serving any field tap customer or any distribution system customer without first obtaining the PSC’s authorization. By its refusal to provide access to natural gas through its gathering line, Petitioner is in contravention of PSC orders discussed in detail herein. *See infra* Part IV.

¹ Field tap, also referred to as mainline or farm tap, is a connection on a production, gathering or transmission pipeline through which a rural utility customer receives a supply of natural gas, however the pipeline is owned by a third-party entity and not the local distribution utility company.

² App. 368 (at n. 7), 369 (at Finding of Fact ¶ 2).

³ App. 202-203, 205 (*Peoples Gas WV, LLC, Equitrans, L.P. and Essential Utilities, Inc.*, Case No. 20-0329-G-P, Comm’n Order (May 20, 2020), consolidated on December 3, 2020 with general investigation, *Equitrans, L.P.*, Case No. 20-0454-G-GI).

⁴ App. 329, 336-338, 340 (Case Nos. 20-0329-G-P, *et al.*, Comm’n Order (Dec. 3, 2020)).

The Petitioner’s low-pressure gathering system consists of approximately 1,420 miles of pipelines throughout West Virginia and provides natural gas access and related services to three major local distribution companies that deliver gas utility service by and through the gathering system to field tap and other customers in Monongalia, Marion, Taylor, Harrison, Wetzel, Tyler, Ritchie, and Doddridge counties.⁵ The local distribution company named as respondent in this appeal is Hope Gas, Inc., doing business as, Dominion Energy West Virginia (“Hope”) which provides natural gas utility service, subject to PSC regulation, to more than 110,000 customers throughout 35 counties in the State, of which 1,134 of its customers are residential field tap customers served through the gathering system owned and operated by Petitioner. (Answer and Mot. to Dismiss 1, Dec. 17, 2020.)

A. COMPLAINT CASE ON APPEAL - CASE NO. 20-0994-G-C

On December 7, 2020, the Complaint case was initiated upon the Respondent, Ronald L. Hall⁶, filing a verified formal complaint (“Complaint”) against Hope and EQT Corporation⁷ (“EQT Corp.”) generally alleging that Hope and the Petitioner had denied the Halls’ requests to receive natural gas service in Reader, Wetzel County, West Virginia, (“the Property”) through a tap on Petitioner’s nearby gathering pipeline. (Complaint 1, Dec. 7, 2020.) Occupants of the two parcels on either side of the Property were already Hope customers and received field tap gas through Petitioner’s gathering line. (*See id.*) The Property in question had a prior owner’s existing tap that

⁵ App. 113, 118 (Black & Veatch Independent Study of the gathering system dated March 31, 2020).

⁶ Ashton Hall was later added as a Complainant. Mr. Hall owned the property in question at the time of filing the Complaint and subsequently transferred the property to his granddaughter Ms. Hall and her fiancée Timothy Long. (*See* Case No. 20-0994-G-C, Rec. Dec. Finding of Fact ¶¶ 2, 5, Aug. 12, 2021.)

⁷ Mr. Hall incorrectly named EQT Corporation, a holding company that was formerly Equitrans’ parent company. Equitrans was later jointed as a Respondent. (*See* Comm’n Order 2-4, March 12, 2021.)

remained in place on Petitioner's gathering line. Thus, only a gas meter needed to be installed for the Halls to receive service. (*See* Add'l Info. 1-6 (photos), Apr. 12, 2021.)

On December 17, 2020, Hope responded to the Complaint, asserting that Petitioner had declined its request to access the Petitioner-owned gathering line to provide field tap gas service to the Halls. Hope stated that the Petitioner denied Hope's request citing an abandonment proceeding pending before the Federal Energy Regulatory Commission ("FERC")⁸ wherein Equitrans was seeking to abandon its entire gathering system. Hope said that it had done everything it could to provide the Halls with service, but that it had no control over Petitioner's decision to disallow a tap on the gathering line. (Answer and Mot. to Dismiss 2-3, Ex. A, Dec. 17, 2020.)

On February 5, 2021, Petitioner responded to PSC Staff's⁹ recommendation and motion¹⁰ to join Equitrans as a party to the case. Equitrans acknowledged that it denied Hope's tap request to serve the Property.¹¹ Petitioner asserted that it is a natural gas company subject to the exclusive regulation of FERC, and therefore the PSC lacked the authority to require Equitrans to allow additional meter taps on its gathering system. (Response to Mot. to Join 1-8, Feb. 5, 2021.) Additionally, Petitioner noted that Hope is also abandoning its customers served through taps on the gathering line in question. (*Id.* at 2, *citing Hope*, Case No. 20-0660-G-X.)¹²

⁸ App. 156-179 (Abbreviated Application, FERC Docket No. CP20-321-000 (April 30, 2020)).

⁹ "PSC Staff" consists of attorneys from the PSC Legal Division and technical and financial subject-matter experts who investigate the issues presented and review the positions of all parties to a proceeding, in order to present a recommendation for disposition to the PSC. PSC Staff is a formal party to PSC proceedings.

¹⁰ (Staff Initial Memo 1-2, Attachment, Jan. 11, 2021; Mot. To Join Equitrans 1-2, Jan. 11, 2021.)

¹¹ Petitioner received Hope's request to serve the Property in the name of Timothy Long, fiancée of Respondent Ms. Hall. *See supra* Note 6

¹² Hope, as a matter of course, filed with the PSC an Application for Authority to Abandon Service to customers served through Equitrans' gathering system, to avoid a breach of the Master Delivery and Interconnect Agreement with Equitrans. Case No. 20-0660-G-X, Application 1-2, Aug. 27, 2020.

On March 8, 2021, PSC Staff recommended that the PSC order Equitrans to investigate whether gas service may be provided to the Halls at the existing tap, despite the pending abandonment proceedings. If gas service was possible, then Staff recommended that the PSC order Equitrans to provide Hope access to the tap so that it could install a meter and thereby provide natural gas service to the Halls. Staff relied on the Commission’s December 3, 2020 order issued in the general investigation which concluded that Petitioner’s gathering system “. . . is dedicated to the public service in West Virginia and requires state regulation; therefore Equitrans’ operation of the Gathering System is subject to this Commission’s jurisdiction and regulatory authority.”¹³ Staff asserted, therefore, that according to a December 3, 2020 order issued in the general investigation, Equitrans is subject to the jurisdiction of the PSC and must continue to provide service through its gathering system to field tap customers until Petitioner obtains the PSC’s authorization to discontinue such service. (Final Memo at 1-3, Attachment, Mar. 8, 2021.) Staff asserted that Petitioner had not requested, nor had the PSC granted, authorization for Petitioner to abandon services from its gathering system, therefore Petitioner must allow Hope to provide service to the Halls from the gathering pipeline at issue. (*Id.* at 3, Attachment p. 2.)

On March 22, 2021, Petitioner answered the Complaint while expressly objecting to the PSC’s jurisdiction and incorporating by reference its prior jurisdictional arguments. Contending that it was not subject to the PSC’s jurisdiction or regulation, Petitioner relied on a PSC order dated April 20, 2011 (“2011 Order”), issued in *Equitable Gas Company, LLC*, Case No. 10-1385-G-GI, to conclude that its denial of Hope’s tap request was warranted because Petitioner and Hope were seeking to abandon service related to the gathering line at issue. (Answer and Mot. to Dismiss 1-

¹³ App. 329 (*quoting* Case No. 20-0454-G-P, Dec. 3, 2020 Order at Con. Of Law ¶ 2).

2, Mar. 22, 2021.) The Petitioner requested, therefore, that the Commission dismiss the Complaint. (*Id.* at 3-9.)

The PSC held the evidentiary hearing in the Complaint case on April 28, 2021. A transcript of the hearing was docketed on May 5, 2021¹⁴ and post-hearing exhibits were filed on May 10, 2021. Staff and Petitioner filed initial briefs on May 25, 2021 and reply briefs on June 7, 2021.

On August 12, 2021, the Administrative Law Judge (“ALJ”) issued a Recommended Decision for resolution of the Complaint. (Rec. Dec., Aug. 12, 2021.) The ALJ relied on prior PSC orders concluding that Petitioner is subject to the PSC’s authority and ordering Petitioner to continue natural gas access and related services by and through its gathering system until it secures PSC authorization to discontinue services. (*Id.* at 5.) The ALJ determined that the 2011 Order in *Equitable Gas* did not warrant Equitrans’ denial of Hope’s tap request because the “record does not reflect that the gas supply is inadequate to serve the [Halls],” and the Halls’ requests “for farm tap gas service should not be automatically denied on the basis of the abandonment proceeding for which the outcome may not be known for some time to come.” (*Id.*) The ALJ ordered Equitrans to make Line H13087 available for use by Hope to provide natural gas service to the Halls. (*Id.* at 8.)

On August 27, 2021, Petitioner filed Exceptions to the Recommended Decision (“Exceptions”) requesting that the PSC reject the decision and find that Equitrans is not required to make its gathering line available to Hope, or alternatively stay the proceeding until the PSC concludes its general investigation concerning Petitioner’s gathering system. By its Exceptions, Petitioner raised many, if not all, of the arguments it now raises on appeal before this Court. (Exceptions 1-14, Aug. 27, 2021.)

¹⁴ References to testimony from the transcript are cited throughout as “Tr.”

Staff urged the PSC to deny the Exceptions. Staff asserted that the PSC has jurisdiction over Petitioner and has ordered Petitioner to continue providing service through its gathering system until the PSC orders otherwise, therefore, the PSC should order Petitioner to grant Hope access to place a meter on its pipeline to provide service to the Halls. (Response to Exceptions 1-6, Sept. 1, 2021.)

In the March 16, 2022 final order appealed to this Court, the PSC fully analyzed and rejected Petitioner's jurisdictional arguments¹⁵ and issued an order reaffirming the multiple statutory, regulatory, decisional, and historical support for the exercise of its jurisdiction over Equitrans and the gathering system. App. 607-614 (Mar. 16, 2022 order). Its order concluded as follows:

1. The parameters established by the Equitable Gas general investigation for EQT affiliates and subsidiaries, and their successors to use when evaluating field service applications "for new field taps" do not apply here. Case No. 10-1385-G-GI Comm'n Order at 2 (Apr. 20, 2011).

2. Continuous use of the gathering system by Equitable Resources, its affiliates and subsidiaries and their successors or assigns to provide natural gas service to field tap and distribution system customers over multiple decades constitutes a dedication of the gathering assets currently owned and operated by Equitrans. Case No. 20-0329-G-P, Comm'n Order at Conclusion of Law ¶ 1 (Aug. 19, 2020) (*citing* Syl. Pt. 3, *Boggs*, 154 W. Va. 146, 174 S.E.2d 331 (1970)).

3. Equitrans is subject to the Commission's jurisdiction and regulatory power because the welfare of public gas utility field tap and distribution system customers are dependent on the proper conduct of Equitrans and its provision of natural gas service through the gathering system. *Id.* at Conclusion of Law ¶ 2 (*citing* Syl. Pt. 2, *Boggs*).

4. The conditions of the February 29, 2008 Commission Order issued in Case No.07-0098-GT-G-PC and restated in the Crawford Affidavit are binding on Equitable Resources, its affiliates and subsidiaries, and their successors and assigns. Therefore, Equitrans is obligated to comply with the conditions and not discontinue gas service to any customer on its West Virginia lines without the approval of the Commission. Case No. 20-0329-G-P at Conclusion of Law ¶ 3

¹⁵ Petitioner asserted these same jurisdictional arguments in its Petition for Writ of Prohibition pending before this Court in No. 22-0229 filed on March 28, 2022. (*See* Petition at 2.)

(citing Case No. 07-0098-GT-G-PC, Crawford Affidavit at 1-5 (Apr. 14, 2008) and Comm'n Orders entered Feb. 29, 2008, Apr. 24, 2008, May 16, 2008, and Oct. 16, 2008).

5. Equitrans' exceptions should be denied because Equitrans did not establish any error in the findings of fact or conclusions of law of the Recommended Decision.

6. To provide clarity and greater substance for the Commission's conclusion in this case, the Findings of Fact of the Recommended Decision should be modified as discussed in this Order.

App. 615-616.

By its Exceptions the Petitioner raised two specific issues that are relevant to this appeal: (i) that the PSC lacked jurisdiction over Equitrans and the gathering system and (ii) that the PSC's decision ignored the 2011 Order issued in *Equitable Gas*, Case No. 10-1385-G-GI, approving parameters that warrant Equitable Gas Company ("Equitable Gas"), its affiliates and their successors to deny an application to receive natural gas service through a tap placed on pipelines owned by a third party, despite the obligation of Equitable Gas, its affiliates and their successors to continue providing access to natural gas through third-party pipelines. (Exceptions 1-6, 9-13.)

The PSC denied Petitioner's Exceptions upon finding that the PSC did not exceed its legitimate authority or ignore its own precedent, adopted the Recommended Decision with minor modifications and ordered Petitioner to provide Hope access to its gathering line. App. 616.

B. EQUITABLE GAS COMPANY - CASE NO. 10-1385-G-GI

Despite its objection to the PSC's exercise of jurisdiction, the Petitioner relied on the PSC's process for considering new tap customers adopted in the *Equitable Gas* general investigation, Case No. 10-1385-G-GI to warrant its denial of Hope's request for a tap. (Case No. 20-0994-G-C, Exceptions 9-13, Answer and Mot. to Dismiss ¶ 2.) The 2010 general investigation sheds light on the jurisdictional issue on appeal.

The PSC initiated the general investigation in 2010 upon receiving numerous complaints¹⁶ from potential residential utility consumers who had requested natural gas service from Equitable Gas through field taps on third-party pipelines owned and operated by EQT Corp., formally known as Equitable Resources, Inc. (“Equitable Resources”).¹⁷ Equitable Gas was subject to the PSC’s regulation and provided natural gas service to 5,000 customers through taps on third-party affiliate production, gathering or transmission lines that it did not own, nor control. *Equitable Gas Co.*, Case No. 10-1385-G-GI, Comm’n Order 1, 5 (Sept. 1, 2010). Equitrans, a subsidiary of EQT Corp. and an affiliate of Equitable Gas, provided natural gas gathering, storage and transmission services through pipelines that connected to delivery points in Kentucky, Pennsylvania, and West Virginia. *Id.* at 2.

Similar to the *Hall* Complaint case on appeal, the complaints investigated in the 2010 general investigation generally alleged that Equitable Gas or Equitrans ignored or denied tap requests for the provision of natural gas on a third-party pipeline. *Id.* at 4-5, Finding of Fact ¶ 1. Equitable Gas was willing to provide service but asserted its affiliate third-party pipeline owners, or their successors, refused to allow a tap on its pipeline or claimed an insufficient gas supply existed in the line. *Id.* at 5. Moreover, Equitrans asserted that the PSC did not have jurisdiction over it and ignored the effect of the PSC’s conditional approval of the 2008 reorganization,

¹⁶ The following complaint proceedings included Equitable Gas and Equitrans as defendants: *Helmick*, Case No. 10-1034-G-C (filed Jul. 12, 2010), *Ammons*, Case No. 10-0970-G-C (filed Jun. 30, 2010), *Criss*, Case No. 10-0948-G-C (filed Jun. 28, 2010), *Martzall*, Case No. 10-0946-G-C (Jun. 28, 2010). *See also Workman v. Equitable Gas*, Case No. 10-0832-G-C (filed Jun. 8, 2010), *Carpenter v. Equitable Gas*, Case No. 10-0025-G-C (filed Jan. 12, 2010).

¹⁷ At the time, Equitable Gas provided utility service to around 12,500 customers in Braxton, Clay, Doddridge, Gilmer, Harrison, Lewis, Marion, Monongalia, Ritchie, Taylor, Tyler, Upshur, and Wetzel Counties. Case No. 10-1385-G-GI, Comm’n Order 1 (Sept. 1, 2010) (*citing* June 30, 2010 hearing Tr. at 37).

Equitable Resources, Inc. and Equitable Gas, Case No. 07-0098-GT-G-PC (“*Equitable Resources 2008*”). *Id.*

In the 2010 general investigation the PSC: (i) examined the circumstances where natural gas service was either denied, refused or terminated to Equitable Gas’ utility customers due to an affiliate’s refusal to allow a tap or abandonment of its line serving Equitable Gas customers, and (ii) considered whether Equitable Gas, its affiliates and their successors, were complying with the terms of PSC’s orders in *Equitable Resources 2008*. *Id.* at 5.

The *Equitable Resources 2008* proceeding involved the corporate reorganization of Equitable Resources, and its subsidiaries, which included its public utility division, Equitable Gas, into the EQT Corp. holding company structure. The PSC’s conditions, in relevant part, included:

(2) Acceptance of the consent and approval granted herein shall constitute an agreement by Equitable Resources, Inc., Equitable Gas Company, the entities designated in the reorganization plan as NewHoldCo, UtilityHoldCo and GasCoSub, and **any Equitable Resources affiliates and subsidiaries that neither they nor their successors shall discontinue service to any customer served by a main line tap on a production, transmission or gathering line or facility of any Equitable Resources affiliate or subsidiary or their successors**, without first obtaining the authority of the Public Service Commission of West Virginia and that they shall make service available to all future applicants who would be entitled to natural gas or transportation service from such production, transmission or gathering pipelines or facilities under the statutes and applicable regulations to the same extent as if a separation of properties had not taken place, said natural gas service to be provided for the account of the entity known in the reorganization plan as GasCoSub.

(3) Acceptance of the consent and approval granted herein shall constitute an agreement by Equitable Resources, Inc., Equitable Gas Company, the entities designated in the reorganization plan as NewHoldCo, UtilityHoldCo and GasCoSub, and **any Equitable Resources affiliates that neither they nor their successors shall discontinue service to any distribution system customer served on any of the isolated sections of the Equitable utility distribution system in West Virginia**, that are not connected to the interconnected main system in Taylor, Marion and Harrison Counties, without first obtaining the authority of the Public Service Commission of West Virginia, and that they shall make service available to all future applicants who would be entitled to natural gas or transportation service from such isolated distribution facilities under the statutes and applicable regulations to the same extent as if a separation of properties had not taken place, said natural gas service to be provided for the account of the entity known in the reorganization plan as GasCoSub.

* * *

IT IS FURTHER ORDERED that before proceeding with its reorganization, and within 30 days of the issuance of this Order, if it accepts the provisions, requirements and conditions of the Order, Equitable Resources shall file a verified affidavit from a senior Equitable Resources' officer, indicating its understanding and acceptance of the Commission's conditions and its agreement to abide by those conditions. **Such acceptance must state that it is binding on Equitable Resources, as well as its current or future affiliated entities and any successor entities or assigns.**

Id. at 2-4, quoting *Equitable Resources*, Case No. 07-0098-GT-G-PC, Comm'n Order at 15-16 (Feb. 29, 2008) (emphasis added).

During the 2010 general investigation, Equitable Gas, EQT Corp. and Equitrans acknowledged¹⁸ that a condition of the PSC's approval in *Equitable Resources 2008* created their general obligation to provide field tap access to natural gas. Case No. 10-1385-G-GI, Comm'n Order at 1-2 (Sept. 22, 2010). The companies shared certain parameters they had historically used

¹⁸ At the hearing Robert Williams, Deputy General Counsel for EQT Corp. and Equitrans explained "we are cognizant, particularly now, and as [counsel for Equitable Gas] explained the circumstances why the order [in Case No. 07-0098-GT-G-PC] and the affidavit were not factored into our decision making." As a result of operational and personnel changes at Equitrans "there was a fairly aggressive denial of taps in the fall of 2009" but that "happened before [] our awareness of the order [in Case No. 07-0098-GT-G-PC] . . . **when we became aware of the order . . . we went back to the people who were involved in the proceeding, in our view it was clear that whatever . . . the intent was, that we were to continue the [field tap] practice that was in place before the [2008] reorganization . . .**" Case No. 10-1385-G-GI, Transcript from Sept. 15, 2010 hearing at 16-20 (filed Sept. 24, 2010) (emphasis added).

to evaluate requests for field tap service. After negotiations, the parties agreed that despite the obligation of the EQT Corp. companies to continue providing field tap access, it was reasonable for Equitable Gas, its affiliates and their successors to deny a request for new tap service in four instances.¹⁹ *Id.* at Status Reports (Oct. 15, 2010, Mar. 1, 2011).

On April 20, 2011, the PSC adopted the parties' proposed parameters and agreed protocol for processing field tap requests and concluded the investigation. Case No. 10-1385-G-GI, Comm'n Order at 1-4 (Apr. 20, 2011); Status Report at Ex. A, C (Mar. 1, 2011). While the parameters were not intended to address every situation, Equitable Gas, its affiliates and their successors could deny requests for field taps if the PSC approved parameters existed, however the reasonableness of a denial was still subject to review of the PSC. Specifically, the PSC noted that applicants for field tap gas service could challenge the denial of a tap application by filing a formal complaint with the PSC, which is what the Complaint case that is on appeal represents. *See id.* at Comm'n Order 2. Ultimately, Equitrans permitted Equitable Gas access to its gathering system to provide field tap service to each of the complainants whose cases prompted the 2010 general

¹⁹ The four instances included:

1. Due to gas supply shortages on the pipeline, adding the new customer would potentially adversely affect the quality of service to existing customers on that pipeline.
2. The service tap would be on a high pressure pipeline or the quality of the gas supply poses a safety issue.
3. There is a pending, active abandonment proceeding before the Commission on the pipeline that is the subject of the service request. However, potential customers may still make requests for service while the abandonment proceeding is on-going, in the event abandonment is denied.
4. Requests for service on a pipeline with respect to which Equitrans (or some other EQT Corp. entity owning the pipeline) has given formal notice to the Commission and to the utility serving the customer that it intends to take the pipeline out of service, and the utility has failed to make an abandonment filing within 120 days of the notification. Case No. 10-1385-G-GI, Comm'n Order 2-3 (Apr. 20, 2011).

investigation, and natural gas service was provided to rural customers through field taps on pipelines owned by a third party, and not the utility. *Id.* at 1; *See supra* Note 16.

II. SUMMARY OF ARGUMENT

The Petition for Appeal should be denied because it does not meet the standard required for appellate relief from a final order of the Commission.²⁰ Petitioner's claim that the PSC, by its issuance of the March 16, 2022 final order, exceeded its legitimate authority should be rejected because the PSC acted properly and within the scope of its authority in rendering its decision.

The PSC is not without jurisdiction in the underlying Complaint case that resulted in the final order of March 16, 2022. First and foremost, the PSC has broad authority pursuant to W. Va. Code §§ 24-1-1, 24-2-1 to regulate public services which include, *inter alia*, the transportation of and supply of gas servicing 25 or more persons. Second, established case law and PSC precedent support state regulation of certain gathering and transmission pipelines used over a long period of time to serve rural customers and gas producers, and that are necessary for the continued provision of public services. Third, W. Va. Code § 24-3-3a extended the PSC's jurisdiction beyond public utilities to certain intrastate and interstate pipelines as common carriers, under which the Commission has exercised authority over all or some of Petitioner's gathering pipelines and facilities in the past.²¹

Specifically with regard to the PSC's authority over Petitioner's gathering system, in the *Equitable Resources 2008* proceeding the PSC, acting well within its authority under W. Va. Code § 24-2-12, imposed conditions on its approval of the reorganization of a public utility corporation, Equitable Resources, to expressly preserve the Commission's existing statutory

²⁰ *See infra* Part IV.A.

²¹ *See infra* Part IV.B.

jurisdiction over Equitable Resources, its affiliates and subsidiaries, which included the Petitioner, and their successors and assigns, to ensure the entities remaining post-reorganization would continue to provide natural gas access and related services to current and future customers through their production, gathering and transmission pipelines located in West Virginia. No party objected to the PSC's conditional approval. A senior officer of Equitable Resources executed and filed an affidavit ("Crawford Affidavit") to expressly acknowledge and accept the PSC's conditions as binding upon its current or future affiliates and their successors and assigns.²²

Established case law supports the Commission's jurisdiction over the gathering system. The Petitioner's continuous use of the gathering pipelines over decades to provide natural gas access to field tap customers in rural areas is tantamount to a dedication of the gathering assets to the public service, which warrants state regulation requiring the owner to continue providing such public service until permission from the state to terminate such service is obtained.²³

The Petitioner has a public service obligation to provide access to natural gas through its gathering pipelines to facilitate field tap gas service to all current customers and future applicants who request service. Until Petitioner seeks and secures the PSC's authorization under W. Va. Code § 24-3-7 to abandon service on its gathering system, Petitioner must allow Hope to provide service to the Halls from the gathering pipeline at issue in the underlying Complaint case.²⁴ Contrary to Petitioner's present-day assertions, it has previously acknowledged its public service obligation and the PSC's authority over the gathering system.²⁵ Now however, Equitrans

²² *Infra* Part IV.B.4.

²³ *Infra* Part IV.B.2.

²⁴ *Infra* Part IV.B.5.

²⁵ *Infra* Part IV.B.4.b.

conveniently disregards the PSC's authority and denies its public service obligation to serve its own interests over the interests of the public, economy and utility operations of this state.²⁶

While the PSC has acknowledged that Petitioner's operation of an interstate pipeline is subject to oversight by the FERC, the gathering system at issue in the underlying Complaint case is not regulated by FERC. Section 1(b) of the Natural Gas Act, 15 U.S.C. § 717(b), exempts "the production or gathering of natural gas" from FERC's jurisdiction. Accordingly, federal preemption is not an issue, despite Petitioner's repeated assertions that it is a natural gas company subject only to regulation by the FERC. The Petitioner seeks to effectively create a regulatory gap that currently does not exist between the PSC and the FERC. If Petitioner prevails on appeal, however, an unjustified regulatory gap will be established. Equitrans could then cast aside any regulatory responsibility for over 3,000 field tap customers in West Virginia who are served through Equitrans' pipelines, because the PSC would be without power to protect the public served by the gathering system. The Petitioner would be free to abandon the gathering system or sell it to an unqualified, undercapitalized buyer who would have no duty to maintain the system or to provide access to natural gas to thousands of field tap customers whose sole source of gas supply is the gathering system.

In the *Hall* case, the Petitioner denied Hope's request for access to Line H13087 to make field tap gas service available to the Halls and by doing so contravened Petitioner's public service obligation and its prior commitments to provide service through its gathering pipelines until it obtains the PSC's authority to discontinue service and abandon its gathering system. By the March 16, 2022 order, the Commission thoroughly addressed Petitioner's jurisdictional arguments, discussed the PSC's statutory jurisdiction over public service pipelines used to transport gas and

²⁶ *Infra* Part IV.B.4.

serve end use customers and provided the regulatory, decisional and historical basis for the PSC's authority over Petitioner and the gathering system. The PSC acted within the scope of its authority by ordering Petitioner to make Line H13087 available to Hope to install a gas meter on an existing tap on Equitrans' gathering pipeline in order for the Halls to have access to natural gas service. Accordingly, the Petition for Appeal should be denied and the March 16, 2022 final order should be affirmed.

III. STATEMENT REGARDING ORAL ARGUMENT

Oral argument is appropriate under the criteria of Rule 19(a) of the Rules of Appellate Procedure as it would aid in the decisional process.

IV. ARGUMENT

A. THE PETITION DOES NOT MEET THE STANDARDS FOR APPELLATE RELIEF FROM A FINAL ORDER OF THE PSC.

Review of a final order of the PSC by the Supreme Court of Appeals of West Virginia is provided in W. Va. Code § 24-5-1. This Court has stated,

We employ a highly deferential standard of review when examining an order of the Public Service Commission: '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. *United Fuel Gas Co. v. Public Serv. Comm'n*, 143 W.Va. 33, 99 S.E.2d 1 (1957). Syl. Pt. 5, *in part*, *Boggs v. Public Serv. Comm'n*, 154 W.Va. 146, 174 S.E.2d 331 (1970).'

Ohio Valley Jobs Alliance, Inc. v. Pub. Serv. Comm'n, Case No. 18-0249, 2018 W.Va. LEXIS 655, *7-9 (2018) (memorandum decision) (*citing* Syl. Pt. 1, *Broadmoor/Timberline Apartments v. Pub. Serv. Comm'n*, 180 W.Va. 387, 376 S.E.2d 593 (1988)).

This Court has explained that its function is not to substitute its judgment for that of the PSC:

In reviewing a Public Service Commission order, we will first determine whether the Commission's order, viewed in light of the relevant facts and of the

Commission's broad regulatory duties, abused or exceeded its authority. We will examine the manner in which the Commission has employed the methods of regulation which it has itself selected, and supported by substantial evidence. Finally, we will determine whether the order may reasonably be expected to maintain financial integrity, attract necessary capital, and fairly compensate investors for the risks they have assumed, and yet provide appropriate protection to the relevant public interests, both existing and foreseeable. The court's responsibility is not to supplant the Commission's balance of these interests with one more nearly to its liking, but instead to assure itself that the Commission has given reasoned consideration to each of the pertinent factors.

Id., (citing Syl. Pt. 2, *Monongahela Power Co. v. Pub. Serv. Comm'n.*, 166 W.Va. 423, 276 S.E.2d 179 (1981)); See Syl. Pt. 1, *Jefferson County Citizens for Econ. Preservation, et al. v. Pub. Serv. Comm'n.*, 241 W.Va. 172, 177, 820 S.E.2d. 618, 623 (2018).

In *Monongahela*, this Court adopted the comprehensive standard of review applied by many states that consists of a three-prong analysis as follows:

The first is a rather broad inquiry centering on whether the Commission abused or exceeded its statutory jurisdiction and powers. The second step relates to an analysis of the Commission methodology and a determination of whether there is adequate evidence to support the Commission's findings. The third analysis looks to the substantive result of the Commission's Order to see if it has arrived at a proper determination.

Monongahela, at 428, 276 S.E.2d at 183 (applying *Permian Basin Area Rate Cases*, 390 U.S. 747 (1968)).

The Petition does not meet the standard required for appellate relief to warrant vacating the March 16, 2022 final order of the PSC. Contrary to Petitioner's assertion that the PSC exceeded its legitimate authority, the March 16, 2022 order provides the statutory, regulatory, historical and decisional basis for its jurisdiction over Petitioner, which is discussed in detail below. For this reason, the PSC's order should be affirmed.

B. THE ORDER SHOULD BE AFFIRMED BECAUSE THE PSC ACTED WITHIN ITS LEGITIMATE AUTHORITY AND PROPERLY EXERCISED JURISDICTION OVER EQUITRANS' GATHERING PIPELINE PURSUANT TO STATUTE AND CONSISTENT WITH PRECEDENT.

Most recently in a series of orders beginning on April 23, 2019, related to a general investigation proceeding, the PSC properly rejected the jurisdictional arguments that Petitioner now raises on appeal, noting the PSC's statutory jurisdiction over certain public service pipelines, and the regulatory, decisional, and historical basis for the PSC's continued exercise of its jurisdiction over Equitrans.²⁷ The PSC has reaffirmed and explained in prior orders, in detail, its authority over gathering systems used exclusively for gathering by the owner of the system, gathering systems used by owners and non-owners for transportation of gas, gathering systems used both for gathering and serving end use customers, and, as in this case, gathering systems of a **former utility**, its current owner, and their successor.²⁸ In a 2019 general investigation, the PSC examined the decline of natural gas service production and abandonment of service lines owned by third parties, which threatened to disrupt or terminate gas utility service to roughly 20,000 field tap customers in rural distribution service areas solely dependent on third-party pipelines for natural gas, including the Equitrans pipeline at issue in the underlying Complaint case.²⁹

In order to thoroughly examine the jurisdictional arguments raised by Petitioner, it is necessary to examine prior PSC decisions concerning the gathering system along with the statutory authority of the PSC.

²⁷ See App. 525-537 (Jan. 14, 2022 order); App. 395-403 (Nov. 10, 2021 order); App. 362-373 (Aug. 11, 2021 order); App. 329-341 (Dec. 3, 2020 order); App. 281-297 (Aug. 19, 2020 order); App. 197-206 (May 20, 2020 order) (*ordering* Equitrans to continue providing natural gas access and related services by and through the gathering system until it secures the PSC's prior authorization to discontinue service in consolidated Case Nos. 20-0329-G-P, 20-0454-G-GI, 20-0660-G-X). See also App. 374-382 (Aug. 12, 2021 Rec. Dec.); Case No. 18-1475-G-PC Comm'n Order (Apr. 23, 2019).

1. **The PSC’s Jurisdiction under W. Va. Code § 24-2-1 Extends to Equitrans because its Operation of the Gathering Pipeline Provides a Public Service.**

Petitioner acknowledges the PSC has broad authority under to W. Va. Code §§ 24-1-1, et seq. and 24-2-1 to regulate public services, but narrowly and mistakenly limits such authority to only entities that have been designated a “public utility.” (Case No. 20-0994-G-C, Answer & Mot. to Dismiss 4, Mar. 22, 2021 and Petition at 16, Apr. 15, 2022.) The West Virginia Legislature vested the PSC “with the authority and duty to enforce and regulate the practices, services and rates of public utilities” operating within the State. W. Va. Code § 24-1-1(a) (2022). The statute considers a “**public utility**” to include a person or enterprise “. . . engaged in any business, whether herein enumerated or not, . . . which is, or shall hereafter be held to be, a **public service.**” W. Va. Code § 24-1-2 (2021) (emphasis added).

The statute states that the PSC’s jurisdiction “shall extend to all public utilities in this state and shall include any utility engaged in any of the following public services: . . . transportation of oil, gas or water by pipeline; . . . supplying water, gas or electricity; . . . and any other public service.” W. Va. Code § 24-2-1(a) (2021). As such, the PSC’s authority extends to businesses that are not considered, at least in the traditional sense, a utility, but are **determined to provide a public service** within West Virginia **that warrants state regulation** to protect the public receiving the service. The Equitrans pipeline involved in the Hall Complaint both **transports natural gas** from local production to local end-users and **supplies natural gas** to nearby residents through a

²⁸ See *id.*; See *PNG Companies, LLC & Equitable Gas*, Case No. 13-0438-G-PC, Comm’n Order (Nov. 8, 2013); Case No. 10-1385-G-GI, Comm’n Order (Apr. 20, 2011); Case No. 07-0098-GT-G-PC, Comm’n Orders at App. 064-079 (Feb. 29, 2008), Apr. 24, 2008, May 16, 2008, and App. 091-099 (Oct. 16, 2008).

²⁹ Case No. 19-0467-G-GI, *General Investigation into the Continuation of Natural Gas Service to Field Tap Customer*, Comm’n Orders (May 31, 2019, Feb. 12, 2020).

tap on the line.³⁰

The fact that an entity has never been designated to be a public utility is not determinative of the PSC's jurisdiction. Of equal importance is the actual function or service being provided.³¹ This Court has said in considering the PSC's jurisdiction over public services, and thus determining public utilities, "the law looks at what is being done, not to what the utility or person says it is doing."³² Only on a collective reading of W. Va. Code §§ 24-1-1 and 24-2-1 can one appreciate the full extent of the PSC's jurisdiction. Contrary to Petitioner's position, under these statutes the PSC's authority extends to, in this instance, a business transporting gas, supplying gas or providing other public services within this State.

Established case law supports that the PSC's authority under W. Va. Code §§ 24-1-1 and 24-2-1 extends to gathering and transmission lines in certain instances. As discussed in detail below, *infra* Part IV.B.2., this Court in *Boggs v. Public Service Commission*, 154 W.Va. 146, 174 S.E.2d 331 (1970) concluded that natural gas pipelines used at one time by a public utility to directly serve "rural customers over a long period of time constitutes a dedication of the lines to the public service," which thereby warrant state regulation.³³ The Equitrans gathering system formerly was owned by a certificated public service corporation (*i.e.* public utility) and operated to provide retail gas supply to rural field tap customers for decades. The same lines also have

³⁰ In 2010 in its answer to a complaint alleging field tap service was denied, Equitrans asserted that although built to deliver gas to interstate market, it no longer produces or transports gas on the aging gathering pipelines and facilities for that purpose and that it planned to abandon the gathering system. *Ammos v. Equitable Gas Co., et al*, Case No 10-0970-G-C, Answer 1-4, Jul. 30, 2010.

³¹ *E.g., Cranberry Pipeline Corp.*, Case Nos. 02-0655-GT-GI and 04-0160-GT-42A, Comm'n Orders at 3 (Feb 13, 2004), 14 (Jul. 13, 2004) (*holding* it is unnecessary to determine if the natural gas company is a public utility in order to invoke PSC jurisdiction of W. Va. Code § 24-3-3a).

³² Syl. Pt. 3, *Wilhite v. Pub. Serv. Comm 'n*, 150 W.Va. 747, 149 S.E.2d 273 (1966).

³³ Syl. Pts. 2, 3, *Boggs v. Pub. Serv. Comm'n.*, 154 W.Va. 146, 174 S.E.2d 331 (1970).

provided transportation service to gas producers from rural gas wells. The Petitioner still operates the gathering system to serve field tap customers and gas producers located in isolated rural areas of the State. Regardless of Petitioner's assertions that it is not a public utility, the gathering system has continuously operated for decades to provide natural gas service to rural consumers in West Virginia who have no other access to natural gas. The gathering system, therefore, was and is dedicated to and imbued with a public service function. As such, pursuant to W. Va. Code §§ 24-1-1 and 24-2-1, the gathering pipeline subject to the request for field tap service in the underlying Complaint case is subject to the PSC's regulation to protect the interests of the public.

2. Established Case Law Supports the PSC's Regulation of Equitrans' Operation of Gathering Pipelines through which Residents Receive Natural Gas.

The West Virginia Supreme Court of Appeals decision in *Boggs*, 154 W.Va. 146, 174 S.E.2d 331, is instructive and pertinent to the PSC's continuing authority over the gathering system and its owner after the 1988 reorganization of Petitioner's predecessor, Equitable Resources', intra-corporate divisional and subsidiary operations.

Harry C. Boggs ("Boggs") was the owner of a gas transmission line that previously had been owned by the public utility subsidiary of Commonwealth Gas Corporation, Ohio Valley Gas Corporation ("OVGC"). OVGC operated a public utility gas distribution system in Spencer, West Virginia that included certain facilities used for the distribution of natural gas to rural consumers in Roane and Calhoun counties who had tapped onto OVGC's transmission and gathering lines. OVGC filed a petition with the PSC for the consent and approval to sell to Spencer Gas Company ("Spencer Gas Co.") its franchises and natural gas distribution system serving domestic consumers in Spencer, and other domestic rural consumers situate in Roane and Calhoun counties. *Boggs*, at 333, 174 S.E.2d at 148.

The public utility assets that OVGC sought to convey to Spencer Gas Co. included meters,

regulators, fittings and other appliances which connected the retail consumers' service lines to OVGC's transmission and gathering lines. The rural consumers continued to be served directly from the transmission line, which had been conveyed to Boggs. *Id.*

In 1935, the PSC consented to and approved, upon certain conditions, the proposed sale of the distribution facilities serving retail customers in and around Spencer and attached to transmission and field lines from OVGC to Spencer Gas Co. Two of the conditions were that OVGC and Spencer Gas Co. enter into the contract proposed in the proceeding, and that they comply with and adhere to said contract and other commitments made at the hearing. *Id.* at 333-334, 174 S.E.2d at 148-149.

From 1935 to 1964, OVGC and its successors, all affiliates of Commonwealth Gas Corp., complied with the 1935 order of the PSC and adhered to the terms of the contract referred to therein. In 1964, Commonwealth Gas Corp., into which OVGC had merged, conveyed to Boggs its production properties and pipeline system in Roane and Calhoun counties. *Id.* at 334, 174 S.E.2d at 149-150.

Boggs subsequently notified Spencer Gas Co. of an increase in the price of gas that included \$.10 per mcf for the transportation and measurement of make-up gas. The make-up gas was gas which Spencer Gas Co. purchased from Consolidated Gas Supply Corporation and which, when needed, was transported through Boggs' transmission line. This formerly had been permitted by Boggs and his predecessors as an accommodation at no charge to Spencer Gas Co. Alleging that Boggs had threatened to terminate deliveries of gas unless his demands were met, Spencer Gas Co. filed a complaint with the PSC. *Id.*

In response to the complaint, Boggs asserted that he was not a public utility and not subject to the jurisdiction of the PSC, just as Petitioner is contending now.

In its analysis of the jurisdiction of the PSC under W. Va. Code § 24-1-1 this Court, in

Boggs, stated:

The Public Service Commission was created by the Legislature for the purpose of exercising regulatory authority over public utilities. Its function is to require such entities to perform in a manner designed to safeguard the interests of the public and the utilities. Its primary purpose is to serve the interests of the public. In view of the obvious importance of such regulation the Public Service Commission's jurisdiction over facilities serving the public should not be considered to be terminated **unless the action of the Commission and the circumstances surrounding the case demonstrate clearly and unequivocally its intent to relinquish such jurisdiction.**

Id. at 336, 174 S.E.2d at 154 (emphasis added), *citing* 73 C.J.S., *Public Utilities*, § 32; *Delardes v. Morgantown Water Comm'n*, 148 W.Va. 776, 137 S.E.2d 426 (1964). The public utility ownership, sales and transfers of property leading up to the pipeline and ownership configuration existing in *Boggs* is the same as has occurred over the years with the Petitioner's facilities. The PSC never did, or intend to, relinquish jurisdiction, and Petitioner has presented no evidence that the PSC, at any time since Equitable Resources' 1988 reorganization, intended to relinquish its jurisdiction over the gathering system.

Furthermore, the *Boggs* Court held,

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.

Syl. Pts. 2, 3, *Boggs*.

As in *Boggs*, the gathering and transmission lines formerly owned by Equitable Resources, and now owned by Petitioner, have served rural field tap customers and gas producers continuously

for decades. Despite the separation of its utility division from its other non-utility operations by the 1988 reorganization, Equitable Resources continued delivering natural gas utility service through facilities (*i.e.* gathering and transmission pipelines) owned by its subsidiaries that, after the reorganization, primarily performed non-utility operations. Over the years, both before and after the reorganization, rural areas in this state remained and became dependent on the gathering and transmission pipelines of the non-utility operators to receive natural gas utility service or, in the case of third-party producers, to transport gas from wells to market, because no alternative pipelines exist in many areas. Equitable Resources' continuous use of the gathering and transmission lines to provide service to the public "constitutes a dedication or devotion of the line[s] to the public service." The gathering operations of Equitable Resources, now owned by Petitioner, are imbued with a public purpose. As such, the *Boggs* decision authorizes the PSC to exercise jurisdiction and regulatory authority over the gathering system, as a public service, after the 1988 reorganization. *See, e.g.*, App. 525-537 (Jan. 14, 2022 order). Petitioner's gathering system ". . . is dedicated to the public service in West Virginia and requires state regulation; therefore Equitrans' operation of the Gathering System is subject to this Commission's jurisdiction and regulatory authority."³⁴ Thus, Equitrans is subject to the authority of the PSC and must continue to provide service through its gathering system to field tap customers until Petitioner obtains the PSC's authorization to discontinue such service.³⁵

As discussed *infra*, Petitioner's assertion that the PSC superseded *Boggs* with the promulgation of its *Rules Governing the Transportation of Natural Gas*, 150 C.S.R. 16 ("Gas Transportation Rules") and thereby clearly terminated its jurisdiction over the subject gathering

³⁴ App. 340 (Dec. 3, 2020 order at Con. of Law ¶ 2).

³⁵ *Id.* (Con. of Law ¶¶ 2-3).

system is wrong. Moreover, the PSC is not relying on *Boggs* to expand jurisdiction as Petitioner contends. Rather, under its W. Va. Code §§ 24-2-1 and 24-2-12 authority, the PSC relies on *Boggs* to support its conclusion that the gathering system, initially owned by a public utility- now owned by Equitrans, that directly provides utility service to rural customers continuously for decades, constitutes a dedication of the gathering facilities and therefore Equitrans shall continue operating the lines as a public utility until the PSC authorizes the discontinuance of such service.

3. The PSC is Authorized under W. Va. Code § 24-3-3a to Regulate Local Transportation of Gas by certain Intrastate and Interstate Gathering Systems.

In 1983, upon the enactment of W. Va. Code § 24-3-3a, the Legislature extended the PSC’s jurisdiction to include intrastate pipelines as common carriers. The statute authorizes the PSC to regulate certain gathering lines under its jurisdiction over common carriers, including intrastate pipelines and interstate pipelines with unused or excess capacity. An “intrastate pipeline” is defined to mean “(i) any utility or (ii) **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). The authority of W. Va. Code § 24-3-3a is **not dependent on the regulated entity being declared a public utility**, but extends to any other person, firm, or corporation engaged in transportation of natural gas in intrastate commerce in this State.³⁶

³⁶ See *Cranberry Pipeline Corp.*, Case No. 02-0655-GT-GI and 03-0683-GT-42A, Comm’n Order Con. of Law ¶¶ 2-6 (May 5, 2003) whereby the PSC approved the transfer of interstate pipelines after the promulgation of its *Gas Transportation Rules*, and concluded, however, that W. Va. Code § 24-3-3a gives the PSC jurisdiction over Cranberry as an intrastate pipeline whether or not Cranberry is a public utility. When the PSC approved the sale of the Cabot system to Utilicorp in 1989, it “would not have been in the public interest if the PSC did not have continuing jurisdiction over all aspects of Cranberry’s operations to the extent that such operation affect the service to all utility areas and customers being transferred to Utilicorp.” *Id.*

a. Petitioner previously acknowledged PSC’s jurisdiction over interstate pipelines under W. Va. Code § 24-3-3a.

Although not acknowledged in the Petition pending before this Court, Petitioner previously acknowledged the PSC has jurisdiction over interstate pipelines in the Complaint case underlying this appeal.

With respect to interstate pipelines, the Commission is vested with very narrow authority: The Commission ‘may by rule or order, authorize and require the transportation of natural gas in intrastate commerce . . . by interstate pipelines with unused or excess capacity not needed to meet interstate commerce demands[.]’ West Virginia Code § 24-3-3A(b).

(Case No. 20-0994-G-C, Response to Mot. To Join 3, Feb. 5, 2021.) However, Petitioner now contends the PSC, by its own regulations, Rule 2.10 of the *Gas Transportation Rules*, “expressly” rejected its W. Va. Code § 24-3-3a statutory authority to regulate Petitioner’s operation of its gathering lines. (Petition 16-17, 19-20.) *See infra* Part IV.B.3.b., discussing *Gas Transportation Rules*. In promulgating its *Gas Transportation Rules* the PSC did not relinquish jurisdiction over gathering facilities. It did determine that it would not apply all of its rules and regulations applicable to public utilities to gathering line entities, but it retained jurisdiction over them as **other persons, firms or corporations** engaged in transportation of natural gas in intrastate commerce in this State. Moreover, Petitioner should be reminded of its first argument: PSC’s authority is established solely from statute. *See City of Bluefield v. Pub. Serv. Comm’n*, 94 W.Va. 334, 340, 118 S.E. 542, 545 (1923). The *Gas Transportation Rules* were not intended, and cannot, invalidate the authority created by W. Va. Code § 24-3-3a. While Petitioner provides no authority to support its position, the PSC has previously relied on this statute to assert jurisdiction over the gathering facilities of others and those now owned by Equitrans.

In Case Nos. 04-0404-G-T and 04-0567-G-T, the PSC asserted W. Va. Code § 24-3-3a jurisdiction over a portion of the subject gathering system. In those proceedings gas producers

sought declaratory relief and requested the PSC to establish rates for transportation services provided by Equitable Field Services, LLC (“EFS”).³⁷ In 2002, EFS acquired pipelines previously owned by its affiliate, the Petitioner here, and claimed that the reduced rates afforded to gas producers in Petitioner’s last rate case at FERC had expired.³⁸ While the Staff of the PSC initially advised that EFS was operating as an intrastate pipeline, and was thus subject to jurisdiction of the PSC as a common carrier, after further investigation Staff recommended that the PSC declare EFS a public utility.³⁹ The PSC concluded that EFS was an intrastate pipeline and pursuant to its authority under W. Va. Code § 24-3-3a(d), the PSC suspended EFS’ revised increased rates.⁴⁰ Notably, before the proceeding concluded, Petitioner re-acquired the pipeline system and opted to refund any and all amounts collected by EFS and Petitioner in excess of the PSC approved rates rather than litigate the rate proceeding pursuant to the PSC’s § 24-3-3a(d) authority to establish appropriate rates for the time in question.⁴¹

In the 2008 reorganization proceeding involving Petitioner’s former parent company, Equitable Resources acknowledged that the PSC’s statutory authority under W. Va. Code § 24-3-3a is not dependent on the “entity being a public utility, but extends to any other person, firm, or corporation engaged in transportation of natural gas in intrastate commerce in the State.” App. 069.

[T]he reorganization will have no impact on the Commission’s jurisdiction over Equitable’s provision of transportation of natural gas by intrastate and interstate pipelines, as the statutory authority purported to be created under West Virginia

³⁷ *Equitable Field Services, LLC*, Case Nos. 04-0404-G-T and 04-0567-G-T, Comm’n Order 1-5 (Aug. 17, 2005), *discussing* procedural history of the proceedings.

³⁸ *Id.* at Comm’n Order 1-4 (Apr. 30, 2004).

³⁹ *See id.* at 3.

⁴⁰ *Id.* at Con. of Law 2, Ordering ¶ 1.

⁴¹ *Id.* at Comm’n Order n.1, Ordering ¶ 6 (Rec. Dec. Jul. 28, 2005, Final Order Aug. 17, 2005).

Code § 24-3-3a is not dependent on the regulated entity being a public utility, but extend to any other person, firm or corporation engaged in transportation of natural gas in intrastate commerce. Therefore, the concerns of [the] parties regarding the effect of the reorganization on the Commission’s jurisdiction are unfounded and without merit.⁴²

For this reason, Equitable Resources dismissed gas producers’ concerns about the effects of the 2008 reorganization on the PSC’s jurisdiction over interstate pipeline systems regarding gathering rates and access to gas markets and transportation for local producers in intrastate commerce.⁴³ The PSC concluded that W. Va. Code § 24-3-3a was sufficient to preserve necessary jurisdiction over pipelines owned or operated by Equitable Resources and its affiliates, with respect to local gas transportation post-reorganization. App. 069-070. It would remain incumbent on producers, however, to bring problems related to pipeline access to the PSC’s attention through making appropriate case filings under W. Va. Code § 24-3-3a. App. 056-057, 060-070.

While the PSC has acknowledged that Petitioner’s operation of its interstate pipeline is subject to the regulation by the FERC, the subject gathering system is not regulated by FERC. Section 1(b) of the Natural Gas Act exempts “the production or gathering of natural gas” from FERC’s jurisdiction. 15 U.S.C. § 717(b).⁴⁴ Accordingly, federal preemption is not an issue.

Accordingly, the PSC under W. Va. Code § 24-3-3a has jurisdiction over, and the authority

⁴² Case No. 07-0098-GT-G-PC, Reply Brief of Equitable Resources and Equitable Gas 11-12 (Sept. 6, 2007).

⁴³ App. 069 (*examining* whether (i) the level of protection gas producers would have to open access transportation post-reorganization, (ii) a newly formed gas transportation subsidiary would continue to provide transportation service in the same manner as Equitable Resources, and (iii) the PSC would retain its jurisdiction over the assets used to serve utility or intrastate transportation customers once the assets were transferred to subsidiaries explicitly designated as non-utilities.)

⁴⁴ Section 1(b) of the Natural Gas Act provides that the Act “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, **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.**” 15 U.S.C. § 717(b) (1994) (emphasis added).

to regulate, the gathering system currently owned and operated by Equitrans. Again, contrary to Petitioner's assertions, whether PSC has jurisdiction over the subject gathering pipeline is not solely dependent on whether the owner is a declared public utility.

b. The rulemaking proceedings for the Gas Transportation Rules affirm the PSC's jurisdiction to address operation of gathering lines on a case-by-case basis.

The assertion by Petitioner that the PSC terminated its jurisdiction over the subject gathering system by the promulgation of its *Gas Transportation Rules*, specifically the definition of "gathering facilities" at *Gas Transportation Rule 2.10*, is wrong. The PSC adopted the *Gas Transportation Rules* by order dated March 11, 1987 in General Order 228. The PSC did state, in the overview section of that order, that, ". . . the [PSC] has excluded gathering facilities from the provisions of this rule." App. 647. The PSC also stated that by excluding gathering facilities from the provisions of the rules:

... it is the Commission's intent that pipeline facilities connecting producing wells to larger transmission lines will not be subject to the mandatory transportation requirements of these rules.

Id. The PSC went on to state that:

Under the modified rules, all gas pipeline facilities constructed and in operation prior to the effective date of these final rules will not be required to seek a certificate of public convenience and necessity by virtue of the regulations, but such facilities must be registered with the Commission. In addition, the Commission has the authority to regulate construction and operation of these facilities on a case-by-case basis, and the specific complaint cases which have been initiated to date shall not be effected by this exemption.

App. 648 (General Order 228).

The PSC made it clear in General Order 228 that, while pipeline facilities connecting producing wells to larger transmission lines are not subject to the mandatory transportation requirements, the PSC retained authority to regulate construction and operation of those facilities on a case-by-case basis. As the PSC stated in General Order 228, the PSC previously had exercised

its authority to regulate transportation of gas as authorized by W. Va. Code § 24-3-3a, by rule or by order, in the context of complaint cases or other forms of scrutiny. App. 644. This is far from the clear and unequivocal demonstration of intent to relinquish jurisdiction as required by the *Boggs* Court for the PSC to terminate its jurisdiction over facilities dedicated to public service over a long period of time.

In 1995, the PSC promulgated certain amendments to the *Gas Transportation Rules*. One of the proposed amendments was a revision to the prior definition of “Gathering facilities” in order to expand the application of the *Gas Transportation Rules* to certain gathering lines that were classified as “mixed-use,” that is, lines that serve both an intrastate pipeline function and a gathering function. Opponents of the revision argued that the proposed revision would subject thousands of miles of lines in the State to the requirements of the *Gas Transportation Rules* and that there would be practical and legal problems requiring gathering lines to be subject to open access as required by the rule. App. 674-675 (Jan. 18, 1995 General Order 228.1).

The PSC recognized that the proposed revision to the definition of “Gathering Facility” would require open access on all mixed purpose gathering lines. In deciding not to adopt the proposed revision the PSC stated:

. . . problems related to a nonutility’s gathering facility should currently be **addressed on a case-by-case basis** through the complaint process. . . . We do not see how [the proposed revision] enables the Commission to do anything under the proposed rule to protect mainline tap customers that [the PSC] cannot do now.

App. 676-677.

As the PSC stated in General Orders 228 and 228.1, the PSC has jurisdiction to adjudicate issues related to gathering lines on a case-by-case basis and the PSC is now addressing the issues related to Petitioner’s proposed abandonment of its gathering facilities in the pending cases before us, including the *Hall* case that has been appealed to this Court. The PSC clearly did not

demonstrate that it was relinquishing jurisdiction over facilities that had been dedicated to public use over a long period of time and was clearly stating that it was retaining jurisdiction by order on a case-by-case basis.

4. Under W. Va. Code § 24-2-12 the PSC was Authorized to Impose the Affidavit Requirement as a Condition to its Approval of a Corporate Reorganization.

The Crawford Affidavit originated in Case No. 07-0098-GT-G-PC, wherein PSC exercised its W. Va. Code § 24-2-12 jurisdiction by approving the 2008 reorganization subject to conditions. App. 069-079 (Feb. 29, 2008 order). No party objected to the PSC's conditional approval.

The conditions imposed by the PSC in the Equitable Resources reorganization proceeding, including the affidavit requirement, were drafted to address specific concerns expressed by parties, the ALJ, and the PSC in the record. App. 031-075. This Court has held that PSC-imposed conditions in a W. Va. Code § 24-2-12 approval order are not arbitrary when they are "closely tailored to address the Commission's concerns." *W. Va. Citizen Action Group v. Pub. Serv. Comm'n. of W. Va.*, 233 W.Va. 327, 336, 758 S.E.2d 254, 263 (2014).

Furthermore, the PSC's conditions were not without precedent. The PSC imposed similar conditions protecting field tap customers when it approved a corporate reorganization in Case No. 6438, *United Fuel Gas Company* by order issued on June 18, 1970. The PSC enforced the conditions made subject to its approval of the *United Fuel Gas* reorganization, Case No. 6438, decades later in a complaint proceeding initiated by a rural consumer seeking a tap on a gas pipeline owned by a successor of the entities involved in the *United Fuel Gas* reorganization. *See also Sturm v. Mountaineer Gas Co.*, Case No. 03-0367-G-C, 2005 W.Va. PUC LEXIS 620 (Feb. 7, 2005) (*applying* conditions of Case No. 6438 to require a successor to not discontinue service).

Equitable Resources understood the conditions of the PSC's approval of its 2008 reorganization and signed the Crawford Affidavit. App. 080-090 (Crawford Affidavit). It did not

object to signing the Crawford Affidavit or ask the PSC to reconsider the conditions for approval or the affidavit requirement. It did not appeal the PSC's order. The time to assert objections and challenges to the PSC's exercise of jurisdiction under W. Va. Code § 24-2-12, conditional approval of the reorganization, and requirement of the Crawford Affidavit was in 2008, not 2022.

a. The Crawford Affidavit acknowledges PSC jurisdiction over the facilities but does not create jurisdiction.

The Crawford Affidavit is a succinct acknowledgement by Equitable Resources at the time of its reorganization, on behalf of itself and its successors and assigns, of the PSC's conditions for approval of the reorganization, as well as the PSC's existing and continuing jurisdiction over the facilities that are currently at issue. The assertion by the Petitioner that the PSC attributes to the Crawford Affidavit special powers to create jurisdiction is incorrect. The PSC does not believe that the Crawford Affidavit created any jurisdiction that would otherwise be lacking for the PSC. Moreover, there was no need to create jurisdiction because, as discussed above, the PSC's jurisdiction over the facilities is conferred by statute and decision[s] of this Court. W. Va. Code §§ 24-1-1, 24-2-1, and, 24-3-3a, and *Boggs*. Although there was no need to create jurisdiction, there was, as discussed above, a need to address parties' concerns that future owners of the facilities would fail to recognize, or refuse to comply with, PSC jurisdiction. App. 055-056 (*Supra* Note 43, *discussing* concerns of producers and others).

b. Petitioner has recognized the validity of the Crawford Affidavit in recent years.

The Petitioner's current disparagement of the Crawford Affidavit seems disingenuous given numerous statements since 2008 to the PSC, the FERC, and other parties recognizing the continuing commitments and obligations stated in the Crawford Affidavit. *See supra* Note 18. For example, by order issued November 8, 2013, in *PNG Companies LLC and Equitable Gas*, Case No. 13-0438-G-PC, the PSC adopted a Joint Stipulation and Agreement for Settlement signed on

October 13, 2013, in which Petitioner's affiliates, Equitable Gas and EQT Corp., reaffirmed obligations under the Crawford Affidavit.

PNG, Peoples Gas WV and their successors and assigns, and EQT Corporation, Equitable and their successors, assigns and affiliates, will honor and acknowledge that they are bound by: (i) the obligations undertaken in the affidavit of Randall L. Crawford executed on April 11, 2008 and filed in Case No. 07-0098-GT-G-PC on behalf of Equitable Resources and Equitable . . . related to field taps off of gathering lines”

Case No. 13-0438-G-PC, Comm'n Order 8 (Nov. 8, 2013), *adopting* Joint Stipulation; *See also* App. 064-079 (Feb. 29, 2008 order), App. 080-090 (text of Crawford Affidavit).

On March 27, 2019, Petitioner signed a Joint Stipulation and Agreement for Settlement which was approved by the PSC in *Peoples Gas WV LLC and Aqua American, Inc.*, Case No. 18-1475-G-PC, which provided,

Notwithstanding any other provision of this Joint Stipulation, nothing herein modifies, alters or amends the Crawford Affidavit, or any obligations or commitments arising from, or assumed in connection with Case No. 07-0098-GT-G-PC, Case No. 10-1385-G-GI, or Case No. 13-0438-G-PC.

Case No. 18-1475-G-PC, Comm'n Order 5 (Apr. 23, 2019), Joint Stipulation and Settlement Agreement 8 (Mar. 27, 2019).

On October 15, 2019, Petitioner acknowledged to Peoples Gas its obligation to obtain prior PSC consent and approval to discontinue service to farm tap customers, stating:

Upon completion of the longwall mining activity, Equitrans 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 to abandon the impacted facilities with the [PSC].⁴⁵

Furthermore, on August 22, 2019, Petitioner acknowledged its Crawford Affidavit commitments in its notice regarding its sale of 592 miles of pipeline to Diversified Production,

⁴⁵ Case Nos. 20-0329-G-P, *et al.*, Reply of Peoples Gas to Equitrans' Oct. 1, 2021 Response, at Attachment (Oct. 6, 2021).

LLC, wherein Equitrans told FERC:

[T]here are more than 800 local distribution farm tap customers and 24 interconnects with local distribution companies connected to the Facilities. Diversified has agreed to continue to abide by the commitments made under the Affidavit of Randall L. Crawford under the Public Service Commission of West Virginia Case No. 07-0098-GT-G-PC, [the] Affidavit of Equitable Resources, Inc. accepting the conditions placed by the Public Service Commission of West Virginia on the reorganization plan submitted by Equitable Resources, Inc., including a commitment regarding continuity of service.⁴⁶

The disingenuity and hypocrisy of the Petitioner's commitment to the conditions in the Crawford Affidavit when it suits its purposes, and then the Petitioner's repudiation of the conditions when it does not suit its purposes is clear. The PSC had jurisdiction and authority under W. Va. Code § 24-2-12 to condition its approval of the Equitable reorganization on Equitable's acknowledgement of PSC jurisdiction over the facilities. The PSC has jurisdiction to enforce Petitioner's obligations under the Crawford Affidavit in the case on appeal. *See* App. 064-079.

5. The PSC Regularly Considers Gas Utility Petitions to Abandon Service under W. Va. Code § 24-3-7.

Despite its 2020 application seeking authority to exit federal jurisdiction pending before FERC, Equitrans has yet to request prior authorization of the PSC to abandon the gathering system and discontinue supplying natural gas to field tap customers through its pipelines. The PSC regularly considers applications to abandon gas service under W. Va. Code § 24-3-7 (2020). The statute requires that a utility may not "abandon gas service or any part thereof" unless it files a petition for permission to do so with the PSC and obtains an order concluding that "the present and future public convenience and necessity permits such abandonment." W. Va.

⁴⁶ App. 398 (*quoting* FERC Docket No. RP19-1482, Notice Regarding Non-Jurisdictional Gathering Facilities and Services (Aug. 22, 2019)).

Code § 24-3-7(a). The PSC evaluates several factors when considering an application to abandon service, including:

[E]vidence of utility financial losses that would result from continuing service, an assessment of the overall costs and benefits of continuing service and a determination whether the costs to continue service outweigh the benefits of continued service to the customers present and future. Implicit in this analysis is a consideration of how the customers served by the lines will fare with or without a continuation of the service.

See Hope, Case No. 12-0937-G-X, Comm'n Order 7-8 (Reopened), (applying the statute and factors), *citing Harry C. Boggs, dba Boggs Natural Gas Co.*, Case Nos. 93-0449-G-X and 94-0159-G-X, Comm'n Order, March 17, 1995, *reconsideration denied*, Comm'n Order, April 25, 2005, *appeal denied* Sept. 12, 1995, W.Va. Supreme Court of Appeals, No. 950997. The PSC applies the above factors and does not arbitrarily deny requests to abandon. *Id.* at Ordering ¶ 1 (*granting* application to abandon). *See also, Mountaineer Gas Co.*, Case No. 19-0882-G-X (Rec. Dec. Mar. 31, 2020, final order Apr. 20, 2020) (*granting* application to abandon and accepting arrangement for utility payment of costs to convert residence to alternate fuel).

Upon Equitrans filing a petition seeking to discontinue service provided through its gathering system, the PSC will apply the above factors and rule on the matter. Until Petitioner seeks and secures PSC authorization under W. Va. Code § 24-3-7 to abandon service on its gathering system, Petitioner must allow Hope to provide service to the Halls from the gathering pipeline at issue.

V. CONCLUSION

WHEREFORE, the PSC in its final order of March 16, 2022, properly and within the scope of its authority ordered Petitioner to make its pipeline available to Hope to install a gas meter on an existing tap in order to provide natural gas service to the Halls. The PSC applied governing law, established case law and PSC precedent when evaluating the Petitioner's Exceptions to the

Recommended Decision and concluded that no error of fact, law or authority was committed. The PSC thoroughly considered, addressed and decided all of the legal arguments that Petitioner asserted in its Exceptions to the March 16, 2022 order on appeal. The PSC appropriately balanced the interests of current and future natural gas consumers and utility customers, the State economy, and public utilities in its March 16, 2022 order. Thus, the substantive result to deny Petitioner's Exceptions was proper. The PSC respectfully requests that this Court affirm the PSC final order of March 16, 2022, in Case No. 20-0994-G-C.

Respectfully submitted this 31st day of May 2022.

THE PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
By Counsel,



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CERTIFICATE OF SERVICE

I, Natalie N. Terry, counsel for the Public Service Commission of West Virginia, do hereby certify that a copy of the foregoing "Statement of the Respondent Public Service Commission of West Virginia of its Reasons for the Entry of its final order of March 16, 2022 in Commission Case No. 20-0994-G-C" has been served upon the following parties of record by First Class United States Mail, postage prepaid this 31st day of May, 2022:

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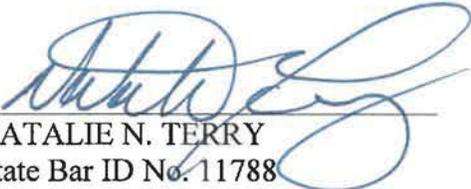
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