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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 22-0293

EQUITRANS, L.P.,

Petitioner,

v.

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

Respondents.

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I. QUESTION PRESENTED

The Public Service Commission [“PSC”] properly exercised jurisdiction over the Petitioner, Equitrans, L.P. [“Equitrans”], by requiring it to allow a utility tap to be connected to its natural gas facilities [“Gathering Facilities”] by the Respondent Ronald Hall [“Hall”].

II. STATEMENT OF THE CASE

A. **PROCEDURAL POSTURE.** This case is on appeal from a PSC order entered on March 16, 2022,¹ that is also the subject of a pending petition for writ of prohibition arising from the same order.² As the jurisdictional issue raised in this appeal is identical to the one raised in the petition for writ of prohibition, there is no reason to resort to the extraordinary remedy of prohibition when Equitrans has availed itself of the ordinary remedy of appeal.

B. **PROCEDURAL HISTORY.** Respondent Hall filed a complaint related to the denial of a meter tap request for natural gas service from Equitrans’ facilities.³ The PSC heard Hall’s complaint and ordered Equitrans to permit the tap.⁴ Equitrans offers no challenge to the PSC’s order other than a jurisdictional one, which has no merit. Thus, the PSC’s order of March 16, 2022, should be affirmed.

3. **SUBSTANTIVE HISTORY.** Equitrans claims that the PSC lacks jurisdiction, but this complaint arises from a series of PSC orders beginning on April 23, 2019⁵ almost three years ago.

¹ App. 605.

² Petition for Appeal at 2.

³ *Id.* at 9.

⁴ *Id.*

⁵ App. 100, 106, 161, 162, 197, 201, 202, 203, 213, 222, 526.

If Equitrans wanted to challenge the PSC's jurisdiction when it was ordered on April 23, 2019,⁶ and on May 20, 2020,⁷ not to discontinue natural gas service to any field tap customer or any distribution system customer (an estimated 3,039 customers), including those of the Respondent, Hope Gas, Inc., dba Dominion Energy West Virginia ["Hope"], served through Equitrans without first obtaining the PSC's authorization, it should have filed a petition for appeal from that order, which rejected Equitrans' challenge to the PSC's jurisdiction: "Equitrans ... assert[s] that the Commission does not have jurisdiction over Equitrans' gathering assets."⁸

Instead, on May 29, 2020, Equitrans filed a Petition for Reconsideration of the PSC's May 2020 Order. It argued that the PSC "is preempted from asserting jurisdiction over Equitrans because Equitrans is an interstate natural pipeline company regulated by ... FERC ..."⁹ Moreover, Equitrans, "request[ed] expedited treatment of this Petition for Reconsideration."¹⁰ One of the stated reasons for this request was Equitrans' position that it "is not required to obtain authorization from the Commission prior to abandoning ... services."¹¹ Those services, included service to "approximately 2,500" customers of Peoples WV.¹² On August 19, 2020, the PSC denied the Petition for Reconsideration, noting the statutory, regulatory, decisional, and historical basis for its exercise of jurisdiction over Equitrans.¹³

⁶ *Id.*

⁷ App. 197.

⁸ App. 198.

⁹ *Id.*

¹⁰ App. 221.

¹¹ App. 235.

¹² App. 113, 193, 202, 213, 330, 351.

¹³ App. 284. Again, Equitrans could have filed an appeal from this order, but did not.

On December 3, 2020, the PSC entered an order directing “Equitrans L.P. to continue natural gas access and related services ... until Equitrans secures Commission authorization to discontinue natural gas access and related services.”¹⁴ The PSC’s order reiterated the statutory, regulatory, decisional, and historical basis for its jurisdiction over Equitrans related to natural gas access and related services.¹⁵ Equitrans could have filed an appeal from this order but did not.

Instead, Equitrans filed a Notice Regarding Non-Certificated Gathering Facilities and Service with the FERC on June 1, 2021, “stating that it intends to terminate gathering service, **effective July 1, 2021**, on ... gathering facilities ... in Wetzel County, West Virginia.”¹⁶ In other words, instead of appealing any of the PSC’s orders to this Court, Equitrans attempted an end-run by going to the FERC and proposing that, upon thirty (30) days’ notice, it be permitted to abandon West Virginia natural gas users. Indeed, in the PSC’s order entered on June 8, 2021, it noted, “Despite Equitrans’ abandonment request and recent Notice at FERC Equitrans has not requested authorization from this Commission to discontinue service. As we have stated before, Equitrans is obligated to continue to provide service ... until it obtains Commission authorization to discontinue service.”¹⁷ Again, Equitrans did not appeal that PSC order.

Two months later, on August 11, 2021, faced with Equitrans’ obstinance, the PSC issued yet another order stating, “We have repeatedly held Equitrans is subject to the Commission’s jurisdiction and that Equitrans must obtain Commission authorization prior to disposing of its

¹⁴ App. 329.

¹⁵ App. 336-338.

¹⁶ App. 358 (emphasis added).

¹⁷ App. 359.

assets or discontinuing natural gas access and gathering service to any West Virginia customer.”¹⁸ As the PSC observed, “Equitrans has had ample time to bring an abandonment case before the Commission. Nonetheless, Equitrans has not done so.”¹⁹

Following this fourth in a series of non-appealed PSC orders rejecting Equitrans’ argument that the PSC lacked jurisdiction, Equitrans complained to the FERC about what it characterized as the PSC’s “attempt to assert jurisdiction over Equitrans.”²⁰ Equitrans assured the FERC: “Any issues involving the PSCWV’s incorrect interpretation of the Crawford Affidavit,” in which Equitrans’ predecessor consented to the PSC’s continuing jurisdiction, “and its unlawful attempt to assert jurisdiction over Equitrans **will be handled outside of this Commission proceeding.**”²¹

Again, for over two years at that point, the PSC, citing statutory, regulatory, decisional, and historical support for doing so, exercised jurisdiction over Equitrans in a series of orders, none of which Equitrans appealed. Instead, Equitrans asked the FERC to unilaterally accept its previously rejected claims of lack of jurisdiction and to refrain from even ruling on the issue because Equitrans would somehow “handle” the jurisdictional dispute “outside of this Commission proceeding.”

On November 10, 2021,²² the PSC issued another order exercising jurisdiction over Equitrans and joining Big Dog Mainstream, LLC [“Big Dog”], as Equitrans proposed in its submission to FERC that its West Virginia facilities be transferred to Big Dog. The PSC noted in its order that it appeared that Equitrans and Big Dog were structuring the sale of the West Virginia

¹⁸ App. 367.

¹⁹ *Id.*

²⁰ App. 384.

²¹ App. 384-385 (emphasis added).

²² App. 395.

facilities to bolster their argument that Big Dog was not subject to the Crawford Affidavit and, therefore, the PSC had no jurisdiction over Big Dog.²³ The PSC noted that this scheme was contrary to what Equitrans had advised FERC in Equitrans' August 22, 2019, FERC Notice: "[T]here are more than 800 local distribution farm tap customers ... Diversified [Equitrans' predecessor] has agreed to continue to abide by the commitments under the Affidavit of Randall L. Crawford."²⁴

On November 22, 2021, Big Dog responded by essentially arguing that, because the PSC has no jurisdiction to disapprove the sale of Equitrans' West Virginia Gathering Facilities to Big Dog, the PSC has no jurisdiction over Big Dog even if it has jurisdiction over Equitrans.²⁵ Big Dog cited no specific legal authority for this position. Although Big Dog represented to the PSC that it had no present intention of abandoning West Virginia customers who depend on its participation in providing them with access to natural gas services, it also stated, "Of course, as any buyer would do in an asset purchase, Big Dog will continue evaluating the Gathering System so that it can determine the appropriate course for the assets and future operations."²⁶

On December 8, 2021, the PSC conducted a hearing on these matters. Following this hearing, the PSC entered an order on January 14, 2022, again rejecting the jurisdiction arguments of Equitrans and Big Dog.²⁷ In addition to the statutory, regulatory, decisional, and historical support for doing so previously cited, the PSC stated, "The continuous use of the Equitrans

²³ App. 397-398.

²⁴ App. 398.

²⁵ App. 404.

²⁶ App. 415. Big Dog did not appeal the PSC's November 20, 2021, Order.

²⁷ App. 528.

gathering system to provide natural gas service to field tap and distribution system customers over multiple decades, many of which preceded the reorganization and transfer of assets, constitutes a dedication of the gathering assets to the public service.”²⁸

Again, continuing the pattern previously discussed, Big Dog did not appeal this order, but filed a Petition for Reconsideration.²⁹ Big Dog essentially argued that, even if the PSC had jurisdiction over Equitrans, it “has no jurisdiction over *Big Dog*, which is not and never has been a public utility, and does not currently own the gathering system.”³⁰

The evasive nature of Big Dog’s discovery responses illustrates what is behind its efforts to avoid regulation by either the PSC or FERC: “Big Dog has not yet determined the rates to be charged ... for gathering and aggregation services;”³¹ “Big Dog has not yet determined the amount of annual operation and maintenance expenses and capital investment required to maintain the Gathering Facilities;”³² “Big Dog paid money to Equitrans to acquire the Gathering Facilities,”³³ while refusing to disclose the purchase price; and “Big Dog has not developed any economic criteria or formula it will use ... to determine whether or not to abandon any portion of the Gathering Facilities.”³⁴ After being ordered by the PSC to attempt to resolve discovery disputes

²⁸ *Id.*

²⁹ App. 540. Equitrans similarly filed an objection to the PSC’s order reiterating its objection to the exercise of jurisdiction. App. 572.

³⁰ App. 542 (emphasis in original).

³¹ App. 562.

³² *Id.*

³³ App. 563.

³⁴ App. 564.

regarding Big Dog's refusal to provide financial information, Big Dog filed a status report on March 15, 2022, reiterating its objections.³⁵

The following day, on March 16, 2022, the PSC entered an order reaffirming its jurisdiction over Equitrans and Big Dog.³⁶ 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 (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.

³⁵ App. 596.

³⁶ App. 605.

Nine days later, on March 25, 2022, Equitrans and Big Dog filed a petition for writ of prohibition alleging the PSC has no jurisdiction over them. Less than a month later, however, on April 15, 2022, Equitrans filed the instant petition for appeal making the same jurisdictional arguments asserted in their petition for writ of prohibition. Indeed, this appeal was from the same March 16, 2022, PSC order that precipitated the filing of the petition for writ of prohibition.

III. SUMMARY OF ARGUMENT

The PSC has jurisdiction over Equitrans and its Gathering Facilities as a public utility or, alternatively, as an intrastate pipeline in order to protect the public – the ultimate purpose of the PSC’s statutory authority and jurisdiction. The PSC’s jurisdiction is appropriate pursuant to its statutory authority, established case law, and the Crawford Affidavit, which binds Equitrans and its potential successor, Big Dog. Moreover, the relief sought by Equitrans would create a legally unsupportable regulatory gap for Equitrans and Big Dog to avoid both PSC jurisdiction and FERC jurisdiction. Such a gap would also have far-reaching adverse implications, not just on the LDCs and customers served through the Gathering Facilities, but also on natural gas production companies, companies and pipelines involved in both past and future corporate spindowns and spinoffs, and the natural gas consuming public. Accordingly, this Court should affirm the order of the Public Service Commission.

IV. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Under R. App. P. 14(k), oral argument under R. App. P. 19(a) is appropriate as this appeal involves an assignment of error of settled law.

V. ARGUMENT

A. STANDARD OF REVIEW

“The principle is well established by the decisions of this Court that an order of the public service commission based upon its finding of facts will not be disturbed unless such finding is contrary to the evidence, or is without evidence to support it, or is arbitrary, or results from a misapplication of legal principles.”³⁷ “The detailed standard for our review of an order of the Public Service Commission contained in Syllabus Point 2 of *Monongahela Power Co. v. Public Service Commission*, 166 W. Va. 423, 276 S.E.2d 179 (1981), “may be summarized as follows: (1) whether the Commission exceeded its statutory jurisdiction and powers; (2) whether there is adequate evidence to support the Commission’s findings; and, (3) whether the substantive result of the Commission’s order is proper.”³⁸ Here, the PSC did not exceed its statutory jurisdiction and powers and, thus, its order should be affirmed.

B. EQUITRANS AND ITS GATHERING FACILITIES ARE SUBJECT TO THE PSC’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 activities as do constitute public service activities.³⁹ Equitrans, like its predecessor 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

³⁷ Syl. pt. 5, *Boggs v. Pub. Serv. Comm’n*, 154 W.Va. 146, 174 S.E.2d 331 (1970) (citation and quotation marks omitted).

³⁸ Syl. pt. 1, *Cent. W.Va. Refuse, Inc. v. Pub. Serv. Comm’n of W. Va.*, 190 W. Va. 416, 438 S.E.2d 596 (1993).

³⁹ *Preston County Light & Power Co. v. Remick*, 145 W. Va. 115, 113 S.E.2d 378 (1960); *Wingrove v. PSC*, 74 W. Va. 190, 81 S.E.2d 734 (1914).

utility customers (at locations where only minor intervening LDCs' facilities; *i.e.*, a meter and perhaps some gas conditioning equipment; lie between Equitrans' pipeline(s) and the end-use customer);⁴⁰ 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 PSC'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 PSC 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.**"⁴¹

Equitrans argues that the PSC does not have jurisdiction over its Gathering Facilities because it is not a public utility. In the main, the PSC'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," 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.

Under W. Va. Code § 24-2-1, a "public utility" is defined as "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

⁴⁰ While the Respondent, Hope Gas, Inc., dba Dominion Energy West Virginia, has 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 to minimize its crucial role in providing this "public service."

⁴¹ Syl. pt. 3, *Wilhite v. Pub. Serv. Comm'n*, 150 W. Va. 747, 149 S.E.2d 273 (1966) (emphasis added).

be, a public service.” Under that statute, the jurisdiction of the PSC 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...**⁴²

Clearly, the Legislature found that the PSC 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 PSC jurisdiction is beyond dispute: in this case, to protect the public receiving gas service.

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 PSC'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. § 24-2-1.

⁴² W. Va. Code § 24-2-1 (emphasis added).

The exemption applies narrowly to the PSC's transportation rules and does not preempt the PSC's broad statutory authority set forth above and as discussed in applicable long-standing case law. The PSC'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 PSC to require, by rule or order, certain types of transportation by pipelines, which resulted in the PSC's transportation rules. Subsection (c) of that statute applies only to that statutory section and limits the PSC'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 PSC'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 PSC's transportation rules, they are still subject to the PSC'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.

Further, while the PSC's jurisdiction clearly extends to entities that have been defined as public utilities (*i.e.*, those providing a public service), the PSC's jurisdiction has also been expanded 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 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 section⁴³ the Commission shall have jurisdiction over such persons, whether public utilities or not, as 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 PSC's jurisdiction over Equitrans exists irrespective of whether 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 PSC's jurisdiction.

Specifically, this Court held in *Boggs v. Public Service Commission*,⁴⁴ 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 PSC has jurisdiction over

⁴³ 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.

⁴⁴ *Supra* note 37.

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, *Boggs* gathering lines 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 in this case. 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. Thus, in Syllabus Point 1 of *Boggs*, this 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.

That statement was made over fifty years ago, but its significance and applicability are no less today than it was then. The facts in *Boggs* are strikingly like the facts involving Equitrans before the PSC.

The Court in *Boggs* summarized the impact upon customers reliant upon service by Boggs if the Court would have agreed that the PSC 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.⁴⁵

⁴⁵ *Boggs, supra* at 151, 174 S.E.2d at 335.

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 PSC review, the potential impact on West Virginia customers is every bit as severe, as discussed in more detail below.

Equitrans argues that the promulgation of the PSC'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 PSC's transportation rules, not to the PSC'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*,⁴⁶ 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 PSC. That is

⁴⁶ *Supra* note 39.

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.

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

Equitrans is playing a game of “now you see it, now you don't” when it disparages its own sworn promises to the PSC and the public it protects in the Crawford Affidavit.⁴⁷ But the Crawford Affidavit was essential to the PSC's approval of the reorganization of ERI, an acknowledged public utility.⁴⁸ 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 PSC's approval.

Equitrans and its gathering lines were expressly bound by the terms of the affidavit of Randall Crawford. But now, fourteen years after the PSC'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

⁴⁷ Randall Crawford was an Equitable Resources Senior Vice President and President of Midstream and Distribution.

⁴⁸ PSC Orders of February 29, 2008, and May 16, 2008, in Case No. 07-0098-GT-G-PC; App. at 1184.

inescapable corollary is that the reorganization of ERI, which was conditioned on the commitments made in the Crawford Affidavit, was also ineffective.

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

Regardless of whether Equitrans is a “public utility,” its use of the Gathering Facilities makes it subject to regulation by the PSC as an intrastate pipeline under W. Va. Code § 24-3-3a, discussed above. This statute bestows upon the PSC 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 PSC 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.”⁴⁹ Regardless of the classification of the pipeline, the PSC has jurisdiction over the use of such lines to transport gas for others for a fee in West Virginia.⁵⁰ Equitrans admits that it transports gas through a pipeline in

⁴⁹ W. Va. Code § 24-3-3a(a)(1).

⁵⁰ 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.eqm-midstreampartners.com/en/IPWS-Equitrans/Informational%20Postings/Tariff/Entire%20Tariff.aspx> (accessed May 4, 2022).

intrastate commerce to or for another person:”⁵¹ Equitrans claims it “does not provide gas utility distribution service, but instead provides gathering service to its customers.”⁵²

Equitrans, with respect to its West Virginia Gathering Facilities, is an intrastate pipeline under state law and subject to state regulation by the PSC. Similarly, if the facilities are transferred to Big Dog, it will be an intrastate pipeline by its own admission. “It has not yet commenced operations, but upon FERC approval, Big Dog Midstream will continue operating the Gathering Facilities to perform a gathering function in a manner like Equitrans.”⁵³ While Big Dog has apparently not yet established rates, it will not transport gas free of charge.

Equitrans asserts that “Only the West Virginia Legislature may vest the PSC with jurisdiction, and that jurisdiction is limited to the regulation of public utilities.”⁵⁴ W. Va. Code §§ 24-3-3a and 24-2-11(i) clearly define “intrastate pipelines” and make them subject to PSC regulation. Equitrans also attempts to dodge jurisdiction as an intrastate pipeline by pointing to PSC Rule 150-16-2.10.⁵⁵ That argument is wrong for several reasons.

First, as discussed above, it is axiomatic that the PSC cannot, by rule, disclaim the statutory grant of jurisdiction over intrastate pipelines. *Second*, the PSC recognized that, given the

⁵¹ “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 gas gathered through the Gathering Facilities, nor does it own the wells producing the gas.” App. at 380. See Petition for Appeal at 4.

⁵² *Id.* See also Petition for Appeal 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.”).

⁵³ Petition for a Writ of Prohibition at 5; *see also id.* at 18 (“Similarly, because Big Dog Midstream will operate the Gathering Facilities in a similar manner....”).

⁵⁴ Petition for Appeal at 11.

⁵⁵ That rule states “Gathering facilities shall not be considered to be either public utilities or intrastate pipelines.”

cooperation in the industry and regulation of interstate pipelines by FERC, there was no need to impose onerous regulatory requirements; rather, in the exercise of what has become known as “light-handed regulation,” the PSC reserved the right to act in appropriate cases. That is precisely what is happening in this case. Equitrans is trying to escape any regulatory oversight of its monopolistic activities with the potential for dire consequences to the producers, public utilities, and consumers dependent upon it, and the PSC has rightfully acted to protect the public interest.

Finally, without any record or legal support, Equitrans attempts 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.⁵⁶ As discussed in the next section, Equitrans’ 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.⁵⁷ The PSC may not be able to regulate that part of Equitrans’ operations occurring in Pennsylvania, but that does not mean that the PSC is powerless to regulate the activities that are occurring in West Virginia.

D. PETITIONERS SEEK TO CREATE A REGULATORY GAP – A WILD, WILD WEST IN WHICH THEY WILL BE UNREGULATED AND ABLE TO CHARGE AND TREAT WEST VIRGINIA NATURAL GAS CUSTOMERS HOWEVER THEY PLEASE.

Equitrans argues for the creation of what would be regulatory gap that does not currently exist, but if successful in this proceeding, they could use to fulfill their corporate goal of disposing of Equitrans’ aged Gathering Facilities at the expense of those served by the pipelines and the gas

⁵⁶ Petition for Appeal at 20.

⁵⁷ App. 167.

consuming public.⁵⁸ How this is happening -- a wild, wild West of unregulated activity -- is best explained in historical context.

1. **Congress Did Not Create a Regulatory Gap with Respect to the Regulation of Intrastate or Interstate Gathering Facilities When It Enacted the NGA**

The FERC regulates the interstate transportation and sale of natural gas under the Natural Gas Act (“NGA”) passed in 1938. NGA § 1(b) specifically excludes “gathering” from FERC jurisdiction,⁵⁹ although, if gathering facilities are owned by a natural gas company, the FERC can exercise some level of control over gathering “in connection with” its primary jurisdiction over such companies to the extent necessary to fulfill its primary mission of protecting consumers.⁶⁰

⁵⁸ Not only does Equitrans seek to create a regulatory gap, but it also claims in the following FERC filings that FERC does not have jurisdiction over its non-certificated gathering facilities:

- Motion for Leave to Answer and Answer of Equitrans, L.P., at p. 11, Docket No. CP20-312 (filed June 12, 2020) (stating that “No party contests that Equitrans is a Commission-jurisdictional entity or that Equitrans provides transmission and gathering services pursuant to existing Commission authorizations. A limited certificate is necessary only to ensure there is not a regulatory gap. There is no regulatory gap where a Commission-jurisdictional operator provides the gathering services”).
- Motion for Leave to Answer and Answer of Equitrans, L.P., at p. 21, Docket No. CP20-312 (filed June 12, 2020) (stating that “For ease of Commission review, Equitrans included the Non-Certificated Gathering Facilities in the Application even though it could have filed a simple notice filing to abandon such facilities.”)
- Answer of Equitrans, L.P., at p. 6, Docket No. CP20-312 (filed June 16, 2021) (stating that “With respect to non-certificated facilities, Equitrans included them in the Application for ease of Commission review. However, Equitrans expressly indicated in the Application: ‘If circumstances or need arises to abandon any of the Non-Certificated Gathering Facilities prior to the Commission’s order on this Application, Equitrans will separately submit a notice filing pursuant to NGA Section 4’”).

⁵⁹ Section 1(b) of the NGA 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).

⁶⁰ *Conoco Inc. v. FERC*, 90 F.3d 536, 545-46 (D.C. Cir. 1996) (“The Supreme Court has to date recognized only the [FERC’s] authority to consider gathering costs “for the purposes of determining the

In the decade of the 1980s, as stated by one United States District Court of Appeals, a “massive reorganization of the industry [was] occasioned by Order Nos. 436 and 636.”⁶¹ Many interstate pipeline companies reacted to these orders by “spinning down” (to affiliates) or “spinning off” (to non-affiliates) (in essence, “conveying”) assets that were found by FERC to be non-jurisdictional gathering. These spin-offs and spin-downs created a not-so-bright dividing line between federal jurisdiction over these pipelines at FERC and state jurisdiction by state regulatory bodies like the PSC. In the early cases, to protect the public interest, the FERC required jurisdictional pipelines to present evidence that existing customers on the gathering facilities would receive continuity of service from the company to which non-jurisdictional gathering facilities were being conveyed.

Then, in 1996, the United States Court of Appeals for the District of Columbia addressed a FERC order that required a two-year default transportation contract to be offered to customers after gathering facilities were spun down to an affiliate. The court held that FERC did not have the authority to impose such conditions on the non-jurisdictional affiliate because FERC lacked jurisdiction over gathering facilities when the facilities were transferred to the affiliate.⁶² The *Conoco* court observed that:

reasonableness of rates subject to its jurisdiction.” *Colorado Interstate*, 324 U.S. at 603, 65 S. Ct. at 839; see also *Panhandle III*, 337 U.S. at 506, 69 S. Ct. at 1257 (“[t]he use of such data for rate making is not a precedent for regulation of any part of production or marketing.”)).

⁶¹ *Conoco, supra* at 545.

⁶² *Conoco supra* at 552-53; see also *Williams Gas Processing-Gulf Coast Co. v. FERC*, 3737 F.3d 1335 (D.C. Cir. 2004) (FERC has no authority to regulate the rate charged for entirely non-jurisdictional gathering services); *Transcontinental Gas Pipe Line Corp. v. FERC*, 485 F.3d 1172 (D.C. Cir. 2007) (observing that FERC can regulate gathering while it is performed by natural gas company but that FERC cannot regulate an affiliate’s non-jurisdictional gathering service); *Equitrans, LP, et al.*, 98 F.E.R.C. ¶ 61,160 (2002).

The ‘regulatory gap’ argument, depending on the inability of the states to protect existing customers, finds support in Supreme Court authority (citation omitted). Nonetheless, the [FERC] did not explain why the states would be unable to protect NorAm’s customers, nor why the purported gap would be a two-year problem. Finally, the fact that the [FERC’s] involvement would end once the contracts between NorAm Field and the NorAm Gas customers were signed does not explain why the [FERC] has the jurisdiction to be involved in the first place.⁶³

The *Conoco* order graphically illustrates the regulatory gap that Equitrans seeks to create in this case. Once the facilities are determined to be non-jurisdictional under the NGA by FERC, FERC cannot act in Equitrans’ FERC abandonment proceeding to require Big Dog to protect West Virginia customers and producers. And, if this Court adopts the position espoused by Equitrans, the PSC will also be powerless to protect those served by the pipelines.

If Equitrans’ argument is accepted, Equitrans and Big Dog will have succeeded in creating an unjustified regulatory gap that will allow Equitrans and Big Dog to simply walk away from any regulatory responsibility for over 3,000 West Virginia customers served through the gathering lines, with Big Dog having free rein to operate as it chooses and charge whatever it wants to charge. What the FERC cannot regulate the PSC is empowered to regulate under its statutory authority to protect the public.

2. There Is No Gap in West Virginia’s Statutory and Regulatory Scheme.

In 1987, the PSC adopted gas transportation rules that extended the benefits of the competitive gas market by requiring local distribution companies and intrastate pipelines to provide open-access, nondiscriminatory gas transportation service to their customers.⁶⁴ At that

⁶³ *Id.* at 553.

⁶⁴ Commission General Order No. 228 (Mar. 8, 1987) (“Order 228”).

time, the PSC **exempted** “gathering facilities” from the rule.⁶⁵ The PSC also referred to gathering as “pipelines and facilities used to collect the gas production from one or more wells so it can be introduced into a transportation system.”⁶⁶

After reciting its authorization to regulate the transportation rates and charges and to issue a certificate of public convenience and necessity to an intrastate pipeline, the PSC observed that it had exercised this authority in complaint cases and “through other forms of scrutiny.”⁶⁷ The PSC exempted “gathering facilities” with the expressed intent that “pipeline facilities connecting producing wells to larger transmission lines will not be subject to the mandatory transportation requirements of the rules.”⁶⁸ However, the PSC did not disclaim jurisdiction:

A definition of ‘gathering facilities’ was included as Rule 1.5(f). The Commission has made an initial determination that gathering facilities, which are pipelines and facilities used to collect the gas production of one or more wells so it can be introduced into a transportation system, should not be subject to the requirements of **these** rules.⁶⁹

The PSC likewise exempted intrastate pipelines from the tariff-filing requirement, noting, “Of course, the PSC may modify the exemption or revoke a specific exemption on a case-by-case basis for good cause shown. Further, any challenge to the rates, service, practices or policies of an entity claiming an exemption may be addressed through the PSC’s complaint procedure.”⁷⁰ Contrary to Equitrans’ assertions, exemption is not synonymous with relinquishing jurisdiction.

⁶⁵ Order 228 at p. 7.

⁶⁶ Order 228 at p. 8

⁶⁷ Order 228 at p. 4.

⁶⁸ Order 228 at p. 7.

⁶⁹ Order 228 at p. 9 (emphasis added).

The PSC's Order 228.1 further illustrates its retention of jurisdiction over gathering facilities and reaffirmed its commitment to light-handed regulation. There, the PSC considered whether to amend its definition of "gathering facilities." The PSC decided that it would not change its definition and require open access on all "mixed purpose" gathering lines, stating:

We decline to make the change **at this time**. If at some later time the current regulatory scheme concerning gathering facilities appears to be failing to protect the public interest, the Commission could change its approach. **We agree with the opponents to the rule change that problems related to a nonutility's gathering facility should currently be addressed on a case by case basis through the complaint process.**⁷¹

This "light-handed regulation" approach was made possible by the gas industry's ability to work together cooperatively and reach satisfactory, fair agreements.⁷² Only once has the PSC been forced to revoke the exemption and require an intrastate pipeline to file tariffs and justify its rates.⁷³ The PSC then observed in a footnote⁷⁴ that

One area that particularly concerned the Commission involved gathering lines that have in the past been regulated by FERC but are divorced from interstate pipelines losing federal regulatory control. These new intrastate lines have abruptly moved from a regulated environment to an unregulated environment. We do not know whether this has created special problems for the industry. We would be willing to consider any petition for additional investigation into the issue if any interested person believes a further investigation is warranted.

⁷¹ Order 228.1 at p. 4 (emphasis added). Producers often build their own pipelines to gather their own gas and then permit other producers drilling wells in the same vicinity to use the pipeline for a fee – a "mixed use."

⁷² See also Rule 6.1, which exempted the terms of existing transportation contracts from rate requirements until those contracts expire.

⁷³ *Cranberry Pipeline Corp.*, Case Nos. 02-0655-GT-GI and 03-0683.GT-42A (Commission Order dated February 13, 2004) at 130 (Conclusions of Law 14, 16) and 132 (Conclusions of Law 21-22) (Commission revokes intrastate pipeline transportation tariff filing exemption due to pipeline owner's lack of uniformity regarding non-discriminatory application of pipeline access terms and conditions and exercises ratemaking jurisdiction by instituting a transportation and storage rate proceeding).

⁷⁴ Order 228.1 at p. 4.

It is certainly warranted in the instant case.

Without any record or legal support, Equitrans attempts to escape classification as an intrastate pipeline under state law and the PSC's regulation on the basis that the facilities Equitrans operate cross state lines, making them interstate and not "solely" intrastate.⁷⁵ This argument is contrary to FERC decisions and United States Supreme Court precedent under the NGA. Equitrans understands the FERC cannot exercise jurisdiction over pipeline facilities exempt from FERC's jurisdiction under NGA § 1(a) if they are gathering facilities, **even if** those facilities cross state lines, as is the case here.⁷⁶ Regulation of such gathering facilities is left to the states.⁷⁷

Furthermore, Equitrans admits that it delivers gas from wells in West Virginia to utilities in West Virginia. While the PSC may not be able to regulate that part of the operations occurring in Pennsylvania, that does not mean, as Equitrans would have it, that a regulatory gap exists, and the PSC is powerless to regulate the substantial activities that occur in West Virginia. It probably goes without saying that states created their own agencies to regulate the natural gas industry within their boundaries, including the PSC. The proper understanding of the statute is that the PSC is empowered to regulate the intrastate activities of an intrastate pipeline.

E. THE ADVERSE CONSEQUENCES AND IMPACTS IF EQUITRANS' ARGUMENT IS ADOPTED.

In addition to the demonstrated fact that the PSC has statutory jurisdiction over Equitrans' Gathering Facilities, it is important for the Court to understand why that PSC jurisdiction is not

⁷⁵ Petition for Appeal at 20.

⁷⁶ "The fact that gathering lines cross state lines does not preclude the Commission from disclaiming jurisdiction. *Locust Ridge Gas Company*, 37 FERC ¶ 61,295 (1986)." *Columbia Gas Transmission Corp.*, 79 FERC ¶ 61,045, 61,211 at n. 22 (1997).

⁷⁷ As the Court stated in *Northwest Central Pipeline v. State Corp. Comm.*, 489 U.S. 493, 509-14 (1989), Congress in the NGA "carefully divided up regulatory power over the natural gas industry" so as to "expressly reserve to the States the power to regulate . . . gathering."

only appropriate, but crucial to the “public service” rendered by those facilities to West Virginians. If Equitrans succeeds in creating a gap between state and federal regulations, the results would be 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 PSC jurisdiction and regulatory oversight, Big Dog could simply refuse to continue to serve those customers without any PSC 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. Equitrans and Big Dog are steadfastly trying to avoid disclosing any facts or making any commitments along those lines.⁷⁸

The record before the PSC shows that the welfare of Hope’s 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 the over 3,000 customers to other sources of supply, such as propane or electricity. The LDCs, including Hope, have estimated the total conversion costs to be approximately \$43.5 million. These costs do not include the extensive operational costs that will

⁷⁸ 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 a Writ of Prohibition at 5.

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 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 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 PSC'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 PSC.

In the first instance, Equitrans proceeded with abandoning certain portions of its Gathering Facilities serving Peoples customers without obtaining required regulatory approvals from the PSC, 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 “to ensure safety ... due to third-party mining activity.”⁷⁹ Equitrans clearly recognized, and committed to, its obligation to obtain the approval of the PSC for the abandonment of such facilities.⁸⁰ But in its June 1, 2021 notice to the FERC, Equitrans reneged on its commitments to both Peoples and the PSC. Thus, without approval by the FERC or the PSC, 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.⁸¹

A second recent example of the justification for the PSC’s exercise of its role to protect West Virginia natural gas customers was reported by the Staff of the PSC 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 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

⁷⁹ App. at 365.

⁸⁰ 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.**

⁸¹ See PGWV’s September 9, 2021, Response to the Commission’s August 11, 2021, Order; Petition for Writ of Prohibition 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.

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 PSC 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 Equitrans is 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.⁸² 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 PSC, 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 not exist in the Equitrans-Big Dog proposed transaction and Equitrans is seeking to prevent the PSC from addressing these critical issues and imposing terms and conditions to protect the public service being rendered through the

⁸² As evidenced by its FERC filing, Equitrans is also trying to abandon its Gathering system. App. at 156.

Gathering Facilities. Preventing the PSC 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 PSC was created to safeguard and serve the interests of the public from the actions of entities like Equitrans and Big Dog. Notwithstanding the Petitioners' arguments to the contrary, just as in *Boggs*, the PSC finds its jurisdiction on the basis that the Gathering Facilities continue to be devoted to the public service.⁸³

VI. CONCLUSION

The Respondent, Hope Gas, Inc., dba Dominion Energy West Virginia, respectfully requests that this Court affirm the order of the Public Service Commission entered on March 16, 2022, in this matter.

**HOPE GAS, INC., DBA DOMINION ENERGY
WEST VIRGINIA**

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⁸³ *Id.*

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CERTIFICATE OF SERVICE

I do hereby certify that on May 31, 2022, I served the foregoing "BRIEF OF THE RESPONDENT HOPE GAS, INC, dba DOMINION ENERGY WEST VIRGINIA" upon counsel of record by email and by having a true copy thereof deposited in the United States mail, postage prepaid, addressed as follows:

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