

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF JETTA OPERATING	)	
APPALACHIA, LLC FOR INITIAL RULES,	)	CASE NO.
REGULATIONS, AND RATES FOR	)	2018-00212
FURNISHING GAS SERVICE PURSUANT TO	)	
KRS 278.485	)	

ORDER

On April 26, 2019, Jetta Operating Appalachia, LLC (Jetta) filed a Request for Amendment of Order (Request for Amendment) with the Commission.<sup>1</sup> In the Request for Amendment, Jetta requests for the Commission to amend its final Order dated April 2, 2019 (April 2, 2019 Order), to eliminate all provisions of the Order related to a requirement that Jetta identify individuals who are entitled to receive natural gas service pursuant to KRS 278.485 and to remove any express or implied requirement that Jetta supply, install, or operate any equipment necessary to artificially odorize natural gas made available to Jetta's customers.<sup>2</sup> On May 14, 2019, the Commission issued an Order denying the Request for Amendment because Jetta had submitted the pleading after the statutory period provided by KRS 278.400.<sup>3</sup> Although the Commission denied the Request for

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<sup>1</sup> Jetta's Request for Amendment (filed April 26, 2019).

<sup>2</sup> *Id.* at 1.

<sup>3</sup> Although Jetta was requesting an amendment to the final Order, it was ostensibly requesting a rehearing pursuant to KRS 278.400. Under KRS 278.400, a petition for rehearing must be filed within 20 days after the service of the Order, and service of a Commission Order is complete three days after the date the Order is mailed. Based upon the plain reading of KRS 278.400, the last day that Jetta could have timely filed its Request for Amendment would have been on April 25, 2019. Therefore, Jetta's Request for

Amendment on procedural grounds, the Commission did reopen the case, pursuant to KRS 278.390,<sup>4</sup> in order to further investigate the notification and odorization issues<sup>5</sup> with regard to farm tap companies. Jetta has filed responses to Commission Staff's Request for Information concerning Notification and Odorization Issues, and the matter now stands ready for a decision.

## DISCUSSION AND FINDINGS

### Notification Issue

In the underlying case, Jetta admits to violating KRS 278.485(1)<sup>6</sup> by providing service to farm tap customers without having a tariff on file with the Commission.<sup>7</sup> Jetta contends that notwithstanding the fact that it did not have an approved tariff filed, Jetta did follow the requirements of KRS 278.485 and 807 KAR 5:026 by giving notice to the Commission and having the new natural gas pipeline installations inspected by representatives of the Commission.<sup>8</sup> Due to these issues, the Commission, in its April 2, 2019 Order, ordered Jetta to file, within 30 days of the date of the Order, a list of potential

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Amendment filed on April 26, 2019, was submitted past the 23-day statutory period. Thus, the Commission had no jurisdiction under KRS 278.400 to consider Jetta's Request for Amendment.

<sup>4</sup> KRS 278.390 provides, in relevant part: "Every order entered by the Commission shall continue in force until the expiration of the time, if any, named by the Commission in the order, or until revoked or modified by the Commission, unless the order is suspended, or vacated in whole or in part, by order or decree of a court of competent jurisdiction."

<sup>5</sup> 807 KAR 5:026, Section 6(12), went into effect on March 27, 2019, during the pendency of Case No. 2018-00212, Application of Jetta for Initial Rules, Regulations, and Rates for Furnishing Gas Service pursuant to KRS 278.485.

<sup>6</sup> KRS 278.485(1), states that "[t]he gas service shall be furnished at rates and minimum monthly charges determined by the Public Service Commission."

<sup>7</sup> April 2, 2019 Order at 3.

<sup>8</sup> *Id.*

customers to whom informational notices have been sent, or will be sent, regarding the availability of farm tap service, and should file within 60 days of the date of this Order, the names of customers who have responded.<sup>9</sup> The Commission further stated in the April 2, 2019 Order that any requests made for service connections with gas producing wells or pipelines, regardless of when the request is made, should be filed with the Commission as they occur.<sup>10</sup> The Commission reasoned that this would ensure that the construction of each service line and the installation of automatic gas regulators and gas meter or meters would be under the supervision of the Commission and would conform to such standards of safety, location, and convenience as may be prescribed by the Commission.<sup>11</sup>

Jetta argues that the requirement to notify potential customers unduly increases the burden on Jetta beyond the unwanted obligations already imposed on it by KRS 278.485.<sup>12</sup> Jetta avers that in order to comply with the Commission's directive to notify potential customers of the availability of farm tap service, it would have to map the area within one-half mile of each of its more than 400 wells and along the length of its hundreds of miles of gathering pipeline.<sup>13</sup> It would then have to determine, by physical examination and/or paying for information from third parties, what residences might fall

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<sup>9</sup> April 2, 2019 Order at 6.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Jetta's Request for Amendment at 3.

<sup>13</sup> *Id.*

within those mapped areas.<sup>14</sup> Jetta would then have to identify the owner of each of the residences and obtain a mailing address for that owner.<sup>15</sup> Finally, Jetta would have to undertake the administrative task of preparing and mailing the required notice to each of the identified persons.<sup>16</sup> Jetta estimates that these activities would cost approximately \$26,550, and notes that these amounts are not included in Jetta's tariff.<sup>17</sup>

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that Jetta has made compelling arguments that it would be unreasonable and cost prohibitive to fulfill the notification requirements as ordered in the Commission's April 2, 2019 Order. Therefore, the Commission finds that Jetta should be relieved of the Commission's directive from the April 2, 2019 Order, which required Jetta to notify potential customers regarding the availability of farm tap service and to file a list of the names of the potential customers as well as customers who responded to the notification with the Commission. Jetta must still comply with 807 KAR 5:026, Section 3(3), which requires a gas company to furnish a copy of an application from any person desiring gas service under KRS 278.485 to the Commission prior to providing gas service. As aforementioned, this will ensure that the construction of each service line and the installation of meters will be under the supervision of the Commission and will conform to such standards of safety, location, and convenience as may be prescribed by the Commission.

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<sup>14</sup> Jetta's Request for Amendment at 3.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Jetta's responses to Commission Staff's Request for Information concerning Notification and Odorization Issues, Item 1.

## Odorization Issue

KRS 278.485(3) provides that the construction of the service line, the installation of gas regulators and meters, and the connection of the service line to the gathering pipeline are subject to “the supervision of the Public Service Commission,” and are required to “conform to such standards of safety . . . as may be prescribed by the Commission.” Pursuant to this authority, the Commission promulgated 807 KAR 5:026, Section 6(12), effective August 8, 2018, to require for farm tap service odorization of combustible gas “in a distribution line.” In the Commission’s April 2, 2019 Order in this proceeding, the Commission directed Jetta to comply with this requirement.<sup>18</sup>

In its objection to this requirement, Jetta argues that although 807 KAR 5:026 Section 6(12), does refer to odorization, the requirement does not clearly apply to the pipelines at issue in Jetta’s proposed tariff.<sup>19</sup> Jetta asserts that its pipelines associated with providing farm tap service are customer lines and not distribution lines pursuant to 807 KAR 5:026, Section 1(2).<sup>20</sup>

Jetta is incorrect. The odorization requirement set forth in 807 KAR 5:026, Section 6(12), clearly applies to the line from the tap on the gathering line to the customer’s premises. KRS 278.485(2) refers to this line as the “service line.”<sup>21</sup> A service line is a

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<sup>18</sup> April 2, 2019 Order at 6.

<sup>19</sup> Jetta’s Request for Amendment at 4.

<sup>20</sup> *Id.* at 4–5; 807 KAR 5:026 Section 1(2), which defines customer line as “all equipment and material required to transfer natural gas from the tap on the gathering line to the customer’s premises and includes the saddle or tapping tee, the first service shutoff valve, the meter, and the service regulator, if one is required.”

<sup>21</sup> A “customer line” as defined in 807 KAR 5:026 Section 1(2) is the customer-owned farm tap service line that transports gas from a gathering or production line to an individual customer.

distribution line that transports gas from a common source of supply, such as a gathering line, to an individual customer.

The terms of 807 KAR 5:026, Section 6(12), are drawn from 49 C.F.R. § 192.625, the federal pipeline safety regulation requiring odorization of combustible gas in distribution lines. In 1980, the Commission's predecessor agency, the Kentucky Energy and Utility Regulatory Commission, requested an opinion from the predecessor agency of the Pipeline and Hazardous Materials Safety Administration (PHMSA) asking whether gas in a service line transporting gas to a single customer from a farm tap on a transmission line must be odorized pursuant to 49 C.F.R. 192.625(a), which requires odorization of combustible gas in a distribution line. In response, PHMSA issued Interpretation 192.625 18, a copy of which is attached to this Order as an appendix, in which PHMSA stated that "Section 192.625(a) requires that gas in distribution lines have a natural odor or be odorized to the limit prescribed. Since service lines are distribution lines, they are subject to the odorization requirements of 192.625(a)." The Commission notes that the same safety concerns that require odorization of combustible gas in a service line transporting gas from a transmission line apply with equal force to odorization of gas in a service line transporting gas from a gathering line pursuant to KRS 278.485.

Jetta argues that even if the Commission's intention was to require odorization of gas supplied through farm tap service pipelines, pursuant to KRS 278.485 and the Commission's regulations, the obligation would fall on the gas recipient, not on Jetta.<sup>22</sup> Jetta contends that the artificial odorization of the supplied gas would require the installation of additional equipment on a farm tap customer's pipeline, and both KRS

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<sup>22</sup> Jetta's Request for Amendment at 5.

278.485(2),<sup>23</sup> and 807 KAR 5:026, Section 3(6),<sup>24</sup> specifically limit the equipment that must be provided by Jetta to the tap and the meter.<sup>25</sup> Jetta further cites to 807 KAR 5:026 Section 3(7),<sup>26</sup> which states that all other approved equipment and material required for farm tap service shall be furnished, installed, and maintained by the customer at his expense and shall remain his property.<sup>27</sup> Hence, Jetta concludes that the odorization of gas requirement should rest with the farm tap customer.<sup>28</sup>

Jetta is correct that KRS 278.485(2) places responsibility on the farm tap customer for the construction and maintenance of the service line and all facilities necessary to furnish gas from a gathering line except the meter, which is the company's responsibility. Therefore, the Commission finds that the obligation imposed by 807 KAR 5:026, Section 6(12), to ensure that combustible gas in a service line is odorized so that it is readily detectable by a person with a normal sense of smell rests on the farm tap customer.

The Commission is of the opinion that it would be more appropriate and practical for the gas company to furnish and maintain any equipment necessary to odorize the gas and to charge the customer for this service. The Commission, however, has limited

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<sup>23</sup> KRS 278.485(2), states that "The applicant for such gas service [farm tap service] shall construct or cause to be constructed, and shall maintain and keep in good repair, the service lines, and shall provide and install or cause to be installed, and keep in good repair, the necessary automatic gas regulators, and shall pay the entire cost thereof. The company, at its own expense, shall provide, install, and maintain the necessary gas meters."

<sup>24</sup> 807 KAR 5:026, Section 3(6), states that "The gas company shall furnish, install, and maintain the meter and the service tap, including saddle and first service shutoff valve, which shall remain its property. The gas company shall ensure that its name appears on each of its meters."

<sup>25</sup> Jetta's Request for Amendment at 5.

<sup>26</sup> Jetta incorrectly cites to 807 KAR 5:026(7) instead of 807 KAR 5:026, Section 3(7).

<sup>27</sup> Jetta's Request for Amendment at 5.

<sup>28</sup> *Id.*

jurisdiction under KRS 278.485 to regulate farm taps and is constrained by the statute, which clearly limits the gas company's obligation to the installation and maintenance of necessary gas meters.

Accordingly, the Commission finds that the General Terms in Jetta's farm tap tariff should specify that it is the responsibility of the customer to ensure that gas in the service line contains a natural odorant, or is odorized, so that the gas is readily detectable by a person with a normal sense of smell, and further that it is the responsibility of the customer to furnish, install, and maintain any odorization equipment necessary to comply with the odorization requirement set forth in 807 KAR 5:026, Section 6(12).

The Commission finds that the construction drawings provided to an applicant for service pursuant to 807 KAR 5:026, Section 3(2), should contain specifications for odorizing equipment and supplies approved by Commission Staff for service installation. The Commission further finds that when Commission Staff inspects the farm tap installation pursuant to 807 KAR 5:026, Section 3(4), it should confirm compliance with the odorization requirement. Specifically, Commission Staff should sample the gas to determine if it contains a natural odorant or is odorized so that it is readily detectable by a person with a normal sense of smell. The Commission finds that Commission Staff may sample the gas for compliance with the odorization requirement by means of a "sniff test" by a person with a normal sense of smell. Pursuant to 807 KAR 5:026, Section 3(4), service should not commence until Staff confirms that the odorization requirement is met.

IT IS THEREFORE ORDERED that:

1. The Commission's April 2, 2019 Order shall be amended to reflect that Jetta is relieved of the Commission's directive requiring Jetta to notify potential customers



regarding the availability of farm tap service and to file a list of the names of the potential customers, as well as customers who responded to the notification with the Commission.

2. Jetta must still comply with 807 KAR 5:026, Section 3(3), which requires a gas company to furnish a copy of an application from any person desiring gas service under KRS 278.485, to the Commission prior to providing gas service.

3. Within 20 days of the date of this Order, Jetta shall file with the Commission, using the Commission's electronic Tariff Filing System, new tariff sheets setting forth the rates, charges, and modifications approved or as required herein and reflecting their effective date and that they were authorized by this Order.

4. The new tariff sheets shall include as a condition of service that gas in the service line contain a natural odorant or be odorized so that the gas is readily detectable by a person with a normal sense of smell as required 807 KAR 5:026, Section 6(12).

5. The farm tap customer shall install and maintain any equipment necessary to odorize the gas, shall supply the odorant used to odorize the gas, and shall pay the entire cost thereof.

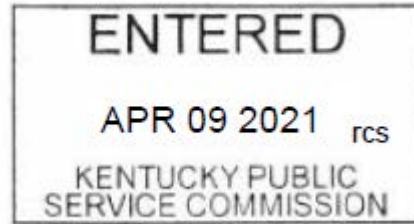
6. Prior to commencement of service, Commission Staff shall inspect the customer service line and confirm compliance with 807 KAR 5:026, Section 6(12), and service shall not commence until Commission Staff determines that Commission specifications have been met.

7. All other provisions of the Commission's April 2, 2019 Order not in conflict with this Order shall remain in full force and effect.

8. This pending investigation that was opened pursuant to KRS 278.390, to further explore the notification and odorization issues with regard to farm taps is closed and removed from the Commission's docket.

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By the Commission



ATTEST:

  
Linda C. Bidwell  
Executive Director

Case No. 2018-00212

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2018-00212 DATED APR 09 2021

TWO PAGES TO FOLLOW

# Interpretation 192.625 18

**PI-80-015**

September 10, 1980

Mr. F. Scott Smith  
Kentucky Energy & Utility  
Regulatory Commission  
730 Schenkel Lane  
P. O. Box 615  
Frankfort, Kentucky 40602

Dear Mr. Smith:

In response to your request of July 18, 1980, we have issued the enclosed interpretation of the odorization requirements applicable to service lines connected to unoderized transmission lines.

Sincerely,

Melvin A. Judah  
Acting Associate Director for Pipeline Safety Regulation  
Materials Transportation Bureau

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NO. 80-13

DATE: September 10, 1980

DEPARTMENT OF TRANSPORTATION  
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION  
MATERIALS TRANSPORTATION BUREAU  
PIPELINE SAFETY REGULATORY INTERPRETATION

Interpretation 192.625 18

A pipeline safety regulatory interpretation applies a particular rule to a particular set of facts and circumstances, and, as such, may be relied upon only by those persons to whom the interpretation is specifically addressed.

**SECTION: 192.625**

**SUBJECT:** Interpretation on the odorization of a single service line served through a farm tap from a transmission line.

**FACTS:** A service line is used to deliver gas to a restaurant directly from a transmission line. Gas in the transmission line is not required to be odorized.

**QUESTION:** Does the gas in the service line have to be odorized?

**INTERPRETATION:** Section 192.625(a) requires that gas in distribution lines have a natural odor or be odorized to the limit prescribed. Since service lines are distribution lines, they are subject to the odorization requirements of §192.625(a). The exception from odorization provided by §192.625(b) for some transmission lines does not affect the requirement to odorize gas in distribution lines connected to an unodorized transmission line.

Melvin A. Judah

Acting Associate Director for Pipeline Safety Regulation

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