

April 26, 2019

HAND DELIVERED

Public Service Commission  
Attn: Gwen R. Pinson, Executive Director  
P.O. Box 615  
211 Sower Boulevard  
Frankfort, KY 40602-0615

RECEIVED

APR 26 2019

PUBLIC SERVICE  
COMMISSION

RE: Jetta Operating Appalachia, LLC – Case No. 2018-00212  
Request for Amendment of Order

Dear Ms. Pinson:

Please find enclosed one original and seven copies of Jetta Operating Appalachia, LLC's Request for Amendment of Order. We have enclosed one additional copy that we would request be returned to our office in the enclosed self-addressed stamped envelope.

Should there be any questions or additional information needed, please do not hesitate to contact me.

Very truly yours,



Karen Greenwell

KJG/mm  
Encls.  
61760728.1

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Case No. 2018-00212

APPLICATION OF JETTA OPERATING  
APPALACHIA, LLC FOR INITIAL RULES,  
REGULATIONS, AND RATES FOR  
FURNISHING GAS SERVICE PURSUANT  
TO KRS 278.485

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APR 26 2019

**REQUEST FOR AMENDMENT OF ORDER**

PUBLIC SERVICE  
COMMISSION

Jetta Operating Appalachia, LLC (“*Jetta*”), requests that the Commission amend its Order dated April 2, 2019 (the “*Order*”) to (a) eliminate all provisions of the Order related to a requirement that Jetta undertake to identify individuals who may come within the scope of KRS 278.485 (the “*Farm Tap Statute*”) and to solicit those individuals to request access to gas pursuant to the Farm Tap Statute, and (b) remove any express or implied requirement that Jetta supply, install or operate any equipment necessary to artificially odorize gas made available to residents pursuant to the Farm Tap Statute. These obligations imposed on Jetta in the Commission’s Order are not supported or authorized by the Farm Tap Statute or 807 KAR 5:026, and they impose an unjustified and undue burden on Jetta. Therefore, they should be deleted from the Commission’s Order.

**I. INTRODUCTION.**

Jetta is not a utility. It produces and gathers natural gas for itself – not for the public. It operates over 400 wells and hundreds of miles of gathering pipelines. It is not in the business of selling or making gas available to residential end-users. However, through the

dictates of the Farm Tap Statute, the General Assembly has imposed on Jetta the unwanted obligation to make gas available to certain individuals, but only within the narrow confines of the express terms of the Farm Tap Statute. In recognition of the substantial burden the Farm Tap Statute places on a producer/gatherer such as Jetta, the General Assembly provided very specific limitations on the obligations of a producer/gatherer under that statute. The Farm Tap Statute is also very specific about the obligations and risks allocated to the recipient of gas pursuant to that statute.

The Farm Tap Statute is very clear about the limited obligations of a producer/gatherer such as Jetta. Jetta must make gas available “upon the request of” (a) the owner of property on which a Jetta well or gathering line is located, or (b) one who owns property and is requesting a point of service on that property within one-half air mile of a Jetta well or gathering line (an “*Eligible Applicant*”). There is no mention in the Farm Tap Statute of any obligation to identify Eligible Applicants or to solicit applicants for gas access.

With regard to the equipment and pipeline necessary to make gas available to an Eligible Applicant, Section (2) of the Farm Tap Statute requires only that a producer/gatherer such as Jetta “provide, install and maintain the necessary gas meters.” That same provision makes the gas recipient responsible for all other aspects of the construction, maintenance and repair of any necessary pipelines or other required equipment. The Commission has recognized this statutory allocation of obligations in 807 KAR 5:026 §3(6) and (7).

The first of those sections, Subsection (6), limits the obligations of a producer/gatherer such as Jetta to furnishing, installing and maintaining the “meter and the service tap, including saddle and first shutoff valve, which shall remain its property.” Subsection (7) allocates to the gas recipient the obligation to furnish, install and maintain at their own cost and expense “**all**

**other approved equipment and material required for the service.”** (emphasis added) Under both the Farm Tap Statute and the Commission’s own regulations, any equipment necessary to artificially odorize gas supplied pursuant to the Farm Tap Statute must be furnished, installed and maintained by the gas recipient – not the producer/gatherer. Consequently, any requirements in that regard should be part of the pipeline construction obligations of the gas recipient, not part of Jetta’s tariff.

## **II. NOTIFICATION.**

On Page 6 of the Order, the Commission expands the Farm Tap Statute’s requirement that a producer/gatherer make gas available “upon request” to requiring Jetta to affirmatively identify each Eligible Applicant and solicit each of them as “customers.”<sup>1</sup>

This notification/solicitation requirement is not supported by the Farm Tap Statute or by any related regulation. Moreover, it grossly and unduly increases the burden on Jetta beyond the unwanted obligations already imposed on it by the Farm Tap Statute. This unsupported edict would require Jetta undertake the chore of mapping 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. It would then have to determine, by physical examination and/or paying for information from third parties, what residences might come within those mapped areas. Jetta would then have to identify the “owner”<sup>2</sup> of each of those residences and a mailing address for that owner. Finally,

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<sup>1</sup> “The Commission further finds that Jetta should file, within 30 days of the date of this Order, a list of potential 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.” Order, p. 6.

<sup>2</sup> Technically, that process could require a title examination since the Farm Tap Statute only applies to the “owner” of the applicable property. Recourse might be had to the records of the county property valuation administrator, although such records are expressly disclaimed as being indicative of title.

Jetta would have to undertake the administrative task of preparing and mailing the required notice to each of the identified persons.

These activities would require many weeks of work by mapping specialists just to identify the relevant areas. Then many more weeks would be required to locate and identify any relevant residences and to ascertain the ownership and addresses of those properties. There would also be clerical and mailing costs for preparing and sending the notices. None of these activities are required or contemplated by the Farm Tap Statute or any related regulation.

The cost for these activities (which Jetta estimates could be tens of thousands of dollars) are not included in Jetta's proposed tariff. The imposition of these obligations, and the concomitant costs, would require Jetta to revise its tariff application to seek recovery of those very substantial costs. That would greatly increase the cost of gas to the few residents currently receiving access to gas through Jetta's Statutory Farm Taps, thus placing an undue burden on them as well as on Jetta.

### **III. ODORIZATION.**

On Page 6 of the Order, the Commission states "...in order to comply with 807 KAR 5:026, §6 (12)<sup>3</sup>, the combustible gas in the distribution lines shall contain a natural odorant or be odorized." As a threshold matter, natural gas produced in Eastern Kentucky generally has a natural odor.

Although 807 KAR 5:026 does refer to odorization, that requirement does not clearly apply to the pipelines at issue in Jetta's proposed tariff. Jetta's proposed tariff applies solely to gas and gas pipelines associated with Statutory Farm Taps. Such a pipeline is defined in 807

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<sup>3</sup> The Section of 807 KAR 5:026 referenced by the Commission reads in its entirety as follows: A combustible gas in a **distribution line** must contain a natural odorant or be odorized so that at a concentration in air of one-fifth (1/5) of the lower explosive limit, the gas is readily detectable by a person with a normal sense of smell. (emphasis added).

KAR 5:026, §1(2) as a “customer line”<sup>4</sup> – not a “distribution line.”

Even if it were the intention of the Commission to require odorization of gas supplied from Statutory Farm Taps, the Farm Tap Statute and the Commission’s regulations place that obligation squarely on the gas recipient – not on Jetta. Artificial odorization would require the installation of additional equipment on a Statutory Farm Tap customer line. Both KRS 278.485(2) and 807 KAR 5:026, §3(6) specifically limit the equipment which must be provided by Jetta to the tap and the meter. As the Commission has stated: “All other approved equipment and material required for service shall be furnished, installed and maintained by the customer at his expense and shall remain his property.” 807 KAR 5:026(7)

The obligation to assure odorization of gas from a Statutory Farm Tap should rest with the “customer,” and the “customer” should supply any additional equipment needed to artificially odorize gas received from a Statutory Farm Tap. Consequently, no requirement relating to odorization should be included in Jetta’s Statutory Farm Tap tariff or in the Order.

#### **IV. CONCLUSION.**

Neither the requirement of odorization nor the notification requirement imposed by the Commission in the Order is supported by statute or regulation, and they should not be included in the Jetta’s tariff or in the Order. Because these requirements are not properly part of Jetta’s obligations under the Farm Tap Statute, the cost associated with them were not included in Jetta’s tariff submission. Unless Commission amends its Order to remove these requirements, Jetta will, at a minimum, be required to seek to greatly increase the amount paid by the very few current recipients of gas pursuant to its Statutory Farm Taps.

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<sup>4</sup> “Customer line” means 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 services shutoff valve, the meter, and the service regulator, if one is required.”

CERTIFICATION

I, Jack Huxel, in my capacity as Senior Landman of Jetta Operating Company, Inc. which is the manager of Jetta Operating Appalachia, LLC, submit this Request for Amendment of Order on behalf of Jetta Operating Appalachia, LLC.



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Jack Huxel, Sr. Landman  
Jetta Operating Company, Inc., Manager  
Jetta Operating Appalachia, LLC