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September 13, 2019

## PSC STAFF OPINION 2019-010

Zach Weinberg, President  
Martin Gas, Inc.  
P.O. Box 783  
Hindman, KY 41822

Dear Mr. Weinberg:

Commission Staff acknowledges receipt of your June 12, 2019, letter on behalf of Martin Gas, Inc. (Martin Gas), requesting an advisory opinion regarding the potential acquisition by Martin Gas of farm tap customers currently served by Diversified Oil & Gas (Diversified).

Based on the facts presented in your letter of June 12, 2019, and Commission Staff's follow-up conversation with you and Mr. John Pinson on June 29, 2019, Commission Staff understands the facts as follows:

- Diversified currently operates natural gas wells and gathering lines in eastern Kentucky, and provides retail natural gas service pursuant to KRS 278.485 to residential customers in the counties of Letcher, Johnson, Perry, Knott, Floyd, Pike and Martin. Diversified is not a "utility" within the meaning of KRS 278.010(3) but rather is a gas production company that operates what is known as a farm tap system.
- Martin Gas is a natural gas local distribution company (LDC) that, according to its 2018 annual report, provides retail natural gas service to 453 customers in Floyd, Perry, and Knott counties, Kentucky. Martin Gas is a "utility" within the meaning of 278.010(3)(b).
- Diversified plans to abandon many of its gathering lines, which would result in a loss of service to customers served by the lines being abandoned.


- Martin Gas proposes to acquire the gathering lines Diversified would otherwise abandon, purchase gas from Diversified, and continue to provide retail natural gas service to the customers connected to these lines.
- Martin Gas does not intend to connect the gathering lines it proposes to acquire to its existing gas distribution system, or to furnish natural gas to the former Diversified farm tap customers from any source other than the wells connected to the gathering lines.
- If Martin Gas does not acquire the gathering lines that Diversified intends to abandon and continue to furnish gas to the customers served by the lines, said customers will lose natural gas service and will be forced to convert to other to other forms of energy.

In your letter, you request an advisory opinion regarding whether Martin Gas' provision of retail gas service to the former Diversified customers will remain farm tap service subject to the Commission's jurisdiction under KRS 278.485 and not subject to the Commission's exclusive jurisdiction under KRS 278.040 over the regulation of the rates and services of utilities. You state that Martin Gas will only proceed with the proposed transaction if its service to the former Diversified customers would remain farm tap service subject only to the requirements of KRS 278.485.

Based on the facts presented in your letter of June 12, 2019, and Commission Staff's follow-up conversation with you and Mr. John Pinson on June 29, 2019, Commission Staff is of the opinion that if Martin Gas proceeds with the transaction as described above, its provision of retail natural gas service to the former customers of Diversified would remain farm tap service subject to regulation under KRS 278.485. Commission Staff is further of the opinion that Martin Gas' provision of retail gas service to the former Diversified customers would not constitute the furnishing of natural gas to or for the public, for compensation, such as would subject such service to the requirements applicable under KRS Chapter 278 to utilities as defined in KRS 278.010(3), but rather would be providing service in its capacity as a farm-tap company pursuant to KRS 278.485. Commission Staff advises, however, that should any aspect of the proposed transaction change, the classification of Martin Gas' service to the former customers of Diversified as farm tap service would be subject to change.

This opinion represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and is not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions concerning this letter should be addressed to John Park, Staff Attorney, at (502) 782-2589.

Sincerely,



John E.B. Pinney  
Acting General Counsel