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October 21, 2013

Mr. Gene Mapes
Managing Member
Jefferson Gas, LLC
P.O. Box 35
Winchester, KY 40392

Re: Jefferson Gas, LLC
Request for an Advisory Opinion

PSC STAFF OPINION 2013-014

Dear Mr. Mapes:

Commission Staff acknowledges receipt of your September 20, 2013 letter in which you request the Commission's review of Jefferson Gas, LLC's ("Jefferson Gas")¹ proposed abandonment of the KZ West gathering line ("KZW"). This opinion represents Commission Staff's interpretation of the law as applied to the facts presented, is advisory in nature, and is not binding on the Commission should the issues herein be formally presented for Commission resolution.

Based upon your letter, Commission Staff understands the facts as follows:

KZW was previously part of a Columbia Gas Interstate pipeline that originally ran from West Virginia to Lexington, Kentucky. This part of the pipeline is twenty miles long and runs from south Means, Kentucky in the east to one mile east of Winchester, Kentucky in the west. This line serves 79 farm tap customers.

Approximately six years ago Columbia Gas received permission from the Federal Energy Regulatory Commission ("FERC") to abandon KZW. Columbia also decided to close its south Means Compressor Station. Since the compressor was critical in allowing Jefferson Gas to move gas from its gathering system into the interstate system, Jefferson Gas agreed to

¹ On November 10, 2002, Jefferson Gas Transmission Company merged with and into Jefferson Gas, LLC. Jefferson Gas, LLC was the surviving entity. See [http://apps.sos.ky.gov/ImageWebViewer/\(S\(jh3i4h55sr1pgq552vngri45\)\)/OBDBDisplayImage.aspx?id=921405](http://apps.sos.ky.gov/ImageWebViewer/(S(jh3i4h55sr1pgq552vngri45))/OBDBDisplayImage.aspx?id=921405) (last visited Oct. 10, 2013).

purchase and operate the south Means compressor, and purchased KZW as part of the transaction.

At the time, Jefferson Gas anticipated substantial new gas production along that line and hoped there would be additional customers to support the expense of operating KZW. That did not occur, and Jefferson Gas is currently losing an average of approximately \$125,000 annually to maintain the pipeline for the 79 farm tap customers.

Following the Commission's review, Jefferson Gas plans to notify the farm tap customers of its intention to abandon KZW and subsequently abandon the line on or about December 1, 2013. Thereafter, Jefferson Gas will purge KZW and cut the line at the flange leading to the south Means compressor. It will also take up one section of line.

You request an opinion as to whether Commission approval is required to permit Jefferson Gas to abandon KZW.

Pursuant to KRS 278.040(2), "[t]he jurisdiction of the Commission extends to all utilities in the state, and the Commission has exclusive jurisdiction over the regulation of rates and service of utilities." KRS 278.010(3) defines a utility as "any person except . . . a city, who owns, controls, operates, or manages any facility used or to be used for or in connection with:"

(b) The production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power, or other uses;

(c) The transporting or conveying of gas, crude oil, or other fluid substance by pipeline to or for the public for compensation.

Commission approval is required prior to transferring control of or abandoning utility facilities. KRS 278.020(5) states in part:

No utility shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission . .

..

Whether Jefferson Gas is a utility is central to its obligation to obtain Commission approval prior to abandoning KZW. To constitute a public utility, some aspect of the plant or

equipment must be put to public use.² "One offers service to the 'public' . . . when he holds himself out as willing to serve all who apply up to the capacity of his facilities. It is immaterial . . . that his service is limited to a specified area and his facilities are limited in capacity."³ A gas pipeline company operating within the limits set forth in KRS 278.485 is referred to as a "farm tap company" or a company that provides "farm tap service." It is not a "utility" as defined in KRS 278.010(3), because it has not dedicated its facilities to serve the public up to the extent of its capacity. Rather, such a company is providing gas service only to those within one-half air mile of a producing well or a gas gathering pipeline as required by statute.⁴

A farm tap system is not required to provide any minimum level of service,⁵ and the Commission's jurisdiction is limited to regulating the rates charged and ensuring the safety of the service lines, gas regulators, gas meters, and the connection with the gas producing well or pipeline. A farm tap company is not required to maintain any fixed or specified gas pressure,⁶ and no state regulatory restrictions are placed upon its ability to abandon a gathering line, as set forth by statute as follows:

Nothing in this section shall be construed to restrict the right of any gas pipeline company to abandon any gas well or gathering pipeline, or any part thereof, and to remove any such abandoned pipeline or lines.⁷

Commission approval is not required for a farm tap provider to abandon any gas well or gathering pipeline. Gathering pipelines may be abandoned and removed with no obligation to continue providing gas service. Unlike jurisdictional utilities, Jefferson Gas is under no obligation to provide future service to those customers that are connected to the abandoned line.

² See *City of Sun Prairie v. Wisconsin Pub. Serv. Comm'n*, 154 N.W.2d 360, 362 (Wis. 1967).

³ *North Carolina ex. rel. Utilities Comm'n v. Carolina Tel. & Tel. Co.*, 148 S.E.2d 100, 109 (N.C. 1966).

⁴ KRS 278.485, states that:

Every gas pipeline company obtaining gas from producing wells located within this state, upon the request of the owner of the property on or over which any producing well or gas gathering pipeline is located or the owner of real estate whose property and point of desired service is located within one-half (1/2) air-mile of said company's producing gas well or gas gathering pipeline, shall furnish gas service to such owner and applicant, subject to and upon the following terms, conditions, and provisions, to wit:"

⁵ Pursuant to KRS 278.010(14), utilities must provide adequate service, defined as "having sufficient capacity to meet the maximum estimated requirements of the customer to be served"

⁶ KRS 278.485(4).

⁷ KRS 278.485(6).

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If Jefferson Gas was acting as a utility under KRS 278.010(3), it would be subject to the provisions of KRS 278.020(5), and would be required to obtain Commission approval prior to abandoning service provided by KZW. However, based upon the representations in your letter that Jefferson Gas does not provide gas to the public at large, but instead sells gas solely as a farm tap system through the KZW gathering line as provided for under KRS 278.485, and in accordance with KRS 278.485(6), Commission approval to abandon KZW is not required. However, Commission Staff strongly recommends that Jefferson Gas provide all customers on KZW with written notice at least 30 days in advance of its intent to abandon service on or about December 1, 2013. Commission Staff renders no opinion as to what, if any, approval may be required from FERC prior to abandoning KZW.

Although Commission approval to abandon KZW is not required, the Commission does regulate standards of safety of gathering lines, pursuant to KRS 278.485(3). Therefore, Jefferson Gas should have a detailed written plan outlining the process and procedures it will follow in the abandonment of the underground facilities. A copy of the plan should be provided to the Commission at least two weeks before commencing to abandon gas service. The plan should include a description of Jefferson's proposed abandonment process, along with the procedures to be followed, personnel roles and responsibilities, schedule of when the abandonment will commence, when it will be completed, and steps taken to ensure the abandoned pipelines are safe, and the shutdown is performed in accordance with any applicable pipeline safety regulations.

This letter 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 opinion should be directed to Jonathan Beyer, Aaron Ann Cole, or Virginia Gregg, Commission counsel, at (502) 564-3940.

Sincerely,



Jeff Derouen
Executive Director

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