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July 31, 2019

Charlotte R. Lane, Chair  
Renee A Larrick, Commissioner, and  
Brooks F. McCabe, Jr. Commissioner  
West Virginia Public Service Commission  
201 Brooks Street  
Charleston, WV 25301  
(Hand Delivered)

Re: General Investigation case 19-0467-G-GI

Dear Friends:

Attached please find a proposed comment (not a request to intervene) in the above referenced General Investigation regarding natural gas supplied by "field taps".

This matter came to the attention of the West Virginia Surface Owner's Rights Organization and on to my attention as its lawyer and co-founder only on July 12, 2019. I began investigating on July 25, 2019, and shortly thereafter discovered that the Commission's order providing only a one month comment period ending July 1, 2019.

The attached proposed comment begins with a statement of the interest of the West Virginia Surface Owner's Rights Organization in this matter.

The gist of our comments is that our experience has taught us that the situations all over the State are so varied that no blanket treatment regarding field taps could possibly equitably apply to every situation, and that these situations that are within the purview of the Public Service Commission should be dealt with on a case by case basis.

We respectfully request that the Commission consider our comments although they are filed after the deadline in the May 31, 2019, Commission Order.

Sincerely,

  
David B. McMahon, J.D.

Encl: Comment of WVSORO  
cc: Executive Secretary



**West Virginia Surface Owners' Rights Organization**  
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**COMMENT**

Case Number 19-0467-G-GI  
Generally regarding "field taps" and conventional gas wells

Prepared by David B. McMahon, J.D.  
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The West Virginia Surface Owner's Rights Organization (WVSORO) is a statewide membership organization with a mission to serve as a resource for surface owners looking for information and guidance on oil and gas drilling and production and to serve as an advocate for surface owners on public policy and regulatory issues. WVSORO or its predecessor<sup>1</sup> with mostly the current staffing, has been in existence since the "Arab Oil Embargo" and the "Iranian Hostage Crisis" first accelerated the drilling of wells on its members' farms and other lands. It has 800 dues-paying members who mostly own the surface but not the underlying minerals. About one third of our members do also own the minerals, but a large number of those are subject to outdated leases.

We are sure that numbers of our members would be affected by changes in access to rural residential natural gas from field taps although we do not have this information in our database. And we also say that we speak for the more than one million West Virginia Citizens that live outside of municipalities<sup>2</sup> with oil and gas issues like field taps that seldom affect those in municipalities.

WVSORO is fully aware, and does not dispute, that the horizontal shale drilling tsunami has changed much about oil and gas well drilling and production and distribution of gas in West Virginia. Most significantly for this investigation is that all gas wells, including conventional vertical wells, decrease in potential production – sharply at first but continuing over time. Further, if they are not maintained with swabbing water and paraffin etc. their production can decline even faster. Further, if they are combination oil and gas wells, if the oil is not pumped then the gas will not flow.

Another change is the efficiency of horizontal shale gas drilling in which one horizontal shale well, although perhaps 20 times more expensive to drill, produces 60 times the gas of a conventional

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<sup>1</sup>As a technical legal matter the West Virginia Surface Owners' Rights Organization is a registered trademark of the West Virginia Citizens Action Group. It had a similarly registered predecessor, the Oil and Gas Reform Coalition.

<sup>2</sup>See <https://suburbanstats.org/population/west-virginia/list-of-counties-and-cities-in-west-virginia>

vertical gas well. As a result, with an unregulated wholesale market (that some would say leads to over production booms followed by busts) the price at which gas is purchased from operators has decreased. WVSORO believes it is true when it is told that the price of gas without some subsidization does not justify the cost of drilling new conventional vertical wells. Or that at least in some parts of the state the only possible source of gas for field taps is a new vertical, conventional, sand formation well.

Also significantly, most of the new gas wells that are being drilled are the horizontal shale wells that are drilled in the north-central part of the state.

In addition, it is true that the pipes for gas lines deteriorate over time, and in our observation have never been replaced or upgraded. The operator placed the cost of laying the lines in its capital drilling costs and in no way plans or budgets for maintenance and upgrades figuring only, no doubt, that it will last as long as the well lasts.

And so there is no question that there is a rapidly emerging problem with supplying gas to field taps in rural areas.

We write to comment that from our experience with our members, with those that contact us and with those that come to our public meetings and ask questions, that we know that the situations all over the State are so varied that no single blanket treatment regarding the problems with field taps could possibly equitably apply to every situation. Therefore these situations that are within the purview of the Public Service Commission should be dealt with on a case by case basis.

There are 1406 oil and gas well operators on record with the Department of Environmental Protection's Office of Oil and Gas that have at least one well -- and many of them do have that few. But they vary in size from operating single digits of wells to thousands of wells. There are more than 65,000 wells on the data base of the Office of Oil and Gas. All of the wells have gathering lines and most transition to moving gas in transmission lines -- though the line between gathering and transmission is as blurred as the numbers would indicate because all those operators conduct business differently and structure their infrastructure differently.

Our best concrete examples of the wide variety of situations come from our experience with what is termed "free gas" which is at one end of the spectrum of situations relating to, if not edging into field taps.

WVSORO provides free telephone advice, from a lawyer if necessary, to surface owners and whoever else calls. The calls average several calls a week. One of the very frequent subjects is the right to "free gas". For this comment "free gas" is distinguished from field taps in that the right to free gas generally originates with a lease between the mineral owner and a driller/operator. Sometimes at the time of the lease the mineral owner also owns the surface, but later severs the surface, and the deed provides that the surface owner receives the right to free gas. (There is a dispute in law who the free gas right belongs to when a severance deed is silent on whether the right is conveyed or reserved.)

The free gas right generally allows the user, at the expense of the user, to run a service line to the wellhead and provide the tap and regulator and the pipeline and perhaps a dehydrator. However, the first confusion between free gas and field tap is that often, for convenience, the free gas user ran its service line to the gathering line running from the well instead of to the wellhead itself. Or even to a line from several wells including the one that gave rise to the free gas right that begins to look like a transmission line. We have even run into situations in which the operator lets gas from a transmission line backfeed through a gathering line to a well head where someone receives free gas, so the operator could report that the well was providing free gas in order to avoid having to declare a well a statutory “abandoned” well that they would be required to plug.

There is another source of free gas that is less frequent but very common in at least some areas. As the operator needed a way to gather and move the gas to market, it needed to put in pipelines across tracts of land for which the operator did not have a lease of the underlying minerals. It was common for the grantor/surface tract owner of the right of way to insist on free gas in exchange for the right of way. Very frequently, in the early days, this arrangement was made completely as a handshake between the operators’ employees and the landowner because the operator was in a rush to get the gas to market and it was a new well with gas to spare. Also many employees were very sympathetic to landowners and made these deals, in writing or not, or just by turning a blind eye.

A further complication run onto is where an unwisely negotiated lease provided authorization to run a pipeline across the lessor’s property not only from the well on the leased property, but from wells on neighboring leased property without payment. And frequently the right to use that line continued even after the well on the leased tract stopped producing and the lease otherwise terminated.

These are the situations with which we have direct knowledge. Complaints to us about pay field are unusual – probably because people call the Public Service Commission, but based on what we do know, the situations are surely as diverse as the situations that are frequently presented to us. One well or group of wells supplies gas only to locals. Or some or much of the gas also goes into transmission to other markets. In some places the underlying gas formation can supply enough new gas from one new well. In some other places so many wells have already been drilled that a new well in that formation is “spaced out” and a new well would only draw from a formation that has already been drained. In other places this has not occurred. Where it has occurred, there may be other formations that can be used. It may be that an economical line can be run outside the spaced-out area to a new well, or to another transmission line or gathering line. It may be that an existing well no longer produces from its original formation but can be re-drilled to a deeper formation, or maybe it can be perforated and a more shallow formation completed. There may be other existing wells on the periphery that could have their gas used with only a new connector pipeline piped into a system with problem wells. (In that case the problem wells will have to be shut off so the gas does not instead go down those wells because they have lower pressures. The operators of those wells will not like that because they will then be required to plug the wells, though the enforcement of that plugging requirement by the State is spotty at best.) Even if there are wells on the periphery, are the subject “distribution” lines in good enough shape. Can they be replaced or can they be rehabilitated by sliding a new plastic liner inside the old pipe that will carry enough gas to supply the field taps though it might not have handled the original production intended for market?

An important benefit to our request that individual cases be done is that the tap users should be notified (other than by a newspaper advertisement – maybe in a bill) because they may know of solutions in their area the supplier does not know about, or does not want to talk about.

And what is the short and long term cost of the solutions (which is only fairly charged to the users), compared to the cost of conversion to propane perhaps with better insulation etc., or to electric with energy efficiencies or even solar net-metering. Will the cost of propane go down with a lot more people using it because there are economies of scale, or is the market for the hydrocarbon itself limited so the price may go up unless regulated?

It costs less per house for distribution pipelines to supply gas to closely spaced houses such as in municipalities than to run the lines that would supply the field taps relied on by so many in rural West Virginia. We understand that it could make sense to somehow subsidize the drilling of conventional vertical wells to continue to supply field taps and put the increased costs of doing that on the users of field taps. Cross subsidization becomes an issue if the gas in that system also goes to a larger regulated market. On the other hand, should those living in municipalities who could not live off the gas under their crowded neighborhoods, get off without helping pay for the cost of delivering gas to those in the areas giving rise to the gas used by the city dwellers.

If a new well is needed who owns the well and should the rates for its sudden monopoly of gas be controlled. What are the capital costs and how will repaying by users be done and at what interest rates etc. And then who will plug the well when it is not longer producing in paying quantities? The current well owners may have long benefitted from the current arrangement, and saved themselves money by neglecting maintenance, and should that be a factor in determining the distribution of costs?

In conclusion, it is good that the Public Service Commission is doing this General Investigation. And it should use the knowledge it has gained by this General Investigation in its decisions in individual cases. But the Commission should be wary of setting any hard and fast principles as a result of the General Investigation. The Commission should insist on dealing with the problem by making decisions in individual cases brought before the Commission based on the discrete facts of the situation present in the individual cases with notice to the users being affected.

###END###