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January 17, 2012

Via Commission eFiling System
Original by US Mail

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

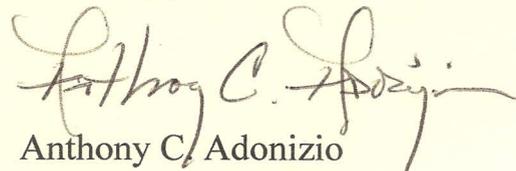
RE: Docket No. M-2012-2282031
Act 127 of 2011 – The Gas and Hazardous Liquids Pipeline Act;
Assessment of Pipeline Operators
Comments on Tentative Implementation Order, entered January 12, 2012

Dear Secretary Chiavetta:

Enclosed for filing please find an original and five (5) copies of the Comments of the Borough of Chambersburg regarding the Tentative Implementation Order of January 12, 2012 in the above-referenced matter.

Please contact the undersigned with any questions concerning this matter.

Sincerely yours,


Anthony C. Adonizio

Enclosures

cc: Per attached Certificate of Service (w/encl.)

John C. Leary, Superintendent Gas Department, Chambersburg (w/encl.)

ACA:mah

are directly regulated and locally controlled by the Chambersburg Town Council, and it is not a “public utility” under the Public Utility Code, and thus not generally subject to the jurisdiction of the Commission.^{2/} However, as properly noted in the Tentative Order (page 3, footnote #1), Chambersburg is a “pipeline operator” as defined at Section 102 of the Gas and Hazardous Liquids Pipelines Act, Act No. 127 of 2011 (“Pipeline Act”), and as of the effective date of the subject statute, Chambersburg will be subject to the limited jurisdiction of the Commission under the Pipeline Act.^{3/}

While Chambersburg is included as a “pipeline operator” under the Pipeline Act, pursuant to Section 301(E)(3) of the statute, Chambersburg is expressly exempt from the payment of any registration fee or annual renewal registration fee. Likewise, pursuant to Section 503(B)(3) of the Pipeline Act, Chambersburg is expressly exempt from the payment of any annual assessments.

^{2/} The municipal gas system exemption in the Public Utility Code is found in the definition of the term “corporation” at section 102, which reads, “Corporation.” All bodies corporate, joint-stock companies, or associations, domestic or foreign, their lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers or privileges of corporations not possessed by individuals or partnerships, but shall not include municipal corporations, except as otherwise expressly provided in this part, nor bona fide cooperative associations which furnish service on a nonprofit basis only to their stockholders or members.” (*emphasis added*) (66 Pa.C.S.A. § 102). Likewise, Section 1301 of the Public Utility Code reads, “Only public utility service being furnished or rendered by a municipal corporation, or by the operating agencies of any municipal corporation, beyond its corporate limits, shall be subject to regulation and control by the commission as to rates, with the same force, and in like manner, as if such service were rendered by a public utility.” (66 Pa.C.S.A. § 1301).

^{3/} The Pipeline Act grants the Commission limited authority to supervise and regulate Chambersburg’s natural gas distribution system, “...consistent with the Federal Pipeline Safety Laws.” (Section 501(A), Pipeline Act), and otherwise expressly limits the Commission’s jurisdiction and authority (see: Sections 504(A) and 504(C), Pipeline Act).

II. COMMENTS

In its part I.A. discussion of pipeline operator registry requirements, the Tentative Order properly notes, at page 3, footnote #1, that, “...Pennsylvania Boroughs...fall within the definition of “pipeline operators.””, and are thus obliged to register annually with the Commission. Likewise, that same footnote in the Tentative Order accurately reflects the Pipeline Act Section 301(E)(3) borough registration fee exemption, as follows, “Such entities, are, however, exempt from paying either the initial or annual registration fees.”

However, throughout the part I.B. discussion of assessments of pipeline operators, the Tentative Order fails to properly reflect the Pipeline Act Section 503(B)(3) provision that boroughs are exempt from the payment of any annual assessments to the Commission.⁴⁷ Chambersburg believes that this omission should be corrected when the Tentative Order is made final, and that it is otherwise important for the Commission to clarify its Final Implementation Order in this regard. There are two reasons why the Pipeline Act Section 503(B)(3) borough assessment exemption provision should be reflected in the Final Implementation Order:

[1] Since the Final Implementation Order will be the primary operational

⁴⁷ Section 503(B)(3) of the Pipeline Act reads, “(3) The assessment under this subsection shall not apply to boroughs.”

instruction for the Commission's Fiscal Office to apply and carry out the assessment provisions of the Pipeline Act, the Final Implementation Order should expressly reflect the Section 503(B)(3) provision that boroughs are exempt from the payment of any annual assessments. The omission of this aspect in the Tentative Order creates a potential ambiguity, by failing to provide Commission implementation direction as to this exemption mandated by the General Assembly.

[2] Additionally, this clarification is prudent in order to avoid possible future errors in the assessment calculation and billing of other pipeline operators, as well as to avoid a possible future under collection by the Commission of its annual costs, as follows.

As written, part I.B. of the Tentative Order requires the Fiscal Office to assess the pipeline operators for the Commission's annual costs based upon each pipeline operator's pro rata portion of the total number of miles of all jurisdictional pipeline operated by all pipeline operators in the previous calendar year.^{5/} This direction to the Fiscal Office in the Tentative Order however fails to properly reflect that the total number of miles of pipeline used for purposes of calculating the Commission's cost per mile, which is then used to calculate each pipeline

^{5/} The Tentative Order reads, "The Commission's Fiscal Office will take the Commission's budgeted costs for its gas and hazardous liquids pipeline safety program and divide that number by the total number of miles of pipelines operated by all pipeline operators in the Commonwealth of Pennsylvania, thereby determining the Commission's cost per mile of pipeline." Pages 6 and 7, Tentative Implementation Order entered January 12, 2012 (*emphasis added*).

operator's respective annual assessment, should not include the miles of pipeline reported to the Commission by Chambersburg. If, as is set forth in the Tentative Order, the calculation of the Commission's cost per mile, and thus the calculation of the pipeline operators' assessments, is based upon the total number of miles of pipeline operated by *all* pipeline operators, *including Chambersburg*, then the resulting determination of the Commission's cost per mile of pipeline which is used to calculate each assessment invoice ("... by multiplying the cost per mile by the number of miles of jurisdictional pipeline of that pipeline operator.") would in turn result in total assessments which would be less than the Commission's annual costs. In order to achieve full collection of the Commission's annual costs in the assessment process, the denominator used in the calculation of the Commission's cost per mile of pipeline (Commission costs divided by miles of pipeline) should not include the miles of pipeline reported by Chambersburg. Accordingly, it is necessary that the Final Implementation Order address the Pipeline Act Section 503(B)(3) borough assessment exemption provision.

In order to correct the above and to provide appropriate clarity, Chambersburg thus recommends that the Tentative Order be modified by the Commission with the changes shown on the redlined markup, which is attached and made a part of these Comments as Exhibit A.

III. CONCLUSION

For the reasons discussed above, Chambersburg respectfully recommends that the Commission modify the Tentative Implementation Order as set forth in the attached Exhibit A redlined markup.

Respectfully submitted,



Anthony C. Adonizio, Esq.
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Borough of Chambersburg

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Dated: January 17, 2012
at Camp Hill, PA

EXHIBIT A
COMMENTS OF THE BOROUGH OF CHAMBERSBURG
PROPOSED CHANGES TO TENTATIVE IMPLEMENTATION ORDER

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held January 12, 2012

Commissioners Present:

Robert F. Powelson, Chairman, Joint Statement
John F. Coleman, Jr., Vice-Chairman
James H. Cawley
Wayne E. Gardner
Pamela A. Witmer, Joint Statement

Act 127 of 2011 – The Gas and Hazardous
Liquids Pipeline Act; Assessment of Pipeline
Operators

M-2012-2282031

TENTATIVE IMPLEMENTATION ORDER

BY THE COMMISSION:

On December 22, 2011, Governor Corbett signed the Gas and Hazardous Liquids Pipelines Act (Pipeline Act), Act 127 of 2011. The Pipeline Act provides authority to the Pennsylvania Public Utility Commission (Commission) to enforce Federal pipeline safety laws as they relate to non-public utility gas and hazardous liquids pipeline equipment and facilities within the Commonwealth of Pennsylvania. Given the increase in gas production in Pennsylvania in recent years, additional pipeline safety inspectors are needed to help protect public safety and to help protect Pennsylvania's environmental resources.

I. Duties of the Commission under the Pipeline Act.

First and foremost, the Pipeline Acts requires the Commission to enforce the federal safety standards and regulations for pipeline operators in the Commonwealth. These standards are set forth in 49 U.S.C. Chapter 601 (relating to safety), the Hazardous Liquid Pipeline Safety Act of 1979 (Public Law 96-129, 93 Stat. 989), the Pipeline Safety Improvement Act of 2002 (Public Law 107-355, 116 Stat. 2985) and the regulations promulgated under these Acts. These regulations can be found in Part 49 of the Code of Federal Regulations, Subtitle B, Chapter I, Subchapter D.

In order to carry out this mandate, the Pipeline Act authorizes the Commission to create a registry of all jurisdictional pipeline operators. The registration, which shall be renewed annually, shall include the location of the pipeline by class location and approximate aggregate miles of pipeline. The Commission is also authorized to fund these activities through an annual assessment on pipeline operators.

In conjunction with the creation of the registry, the Pipeline Act also authorizes the Commission to promulgate regulations necessary to carry out the enforcement of the Federal pipeline safety laws, provided that the regulations are no more stringent than or not inconsistent with applicable federal law or regulations.

Lastly, the Commission must require all pipeline operators to disclose to the Commission the country of manufacture for all tubular steel products used in the exploration, gathering or transportation of natural gas or hazardous liquids.

A. Pipeline Operator Registry.

In accordance with the Pipeline Act, the Commission must develop and maintain a registry of pipeline operators within the Commonwealth of Pennsylvania. "Pipeline operator" is defined in the Act as a person that owns or operates equipment or facilities in this Commonwealth for the transportation of gas or hazardous liquids by pipeline or

pipeline facility regulated under Federal pipeline safety laws. However, the term “pipeline operator” does not include a public utility or an ultimate consumer who owns a service line on the real property of the ultimate consumer.

i. General Rule.

Any entities that meet the definition of “pipeline operator” for activities, facilities or equipment within the Commonwealth of Pennsylvania must register annually with the Commission.¹ Registrants are expected to file their forms using the Commission’s eFile system.

Registration consists of providing the information found on the initial registration form attached hereto as Appendix A, along with a registration fee of \$250. As indicated on the Registration Form, registrants must provide contact information,² their U.S. DOT Operator ID number, and Federal Employee Identification number (EIN). The Commission will organize its registry based on U.S. DOT Operator ID numbers, with the result being that multiple entities which operate all under one U.S. DOT Operator ID number will register as a single pipeline operator (listing all entities using that ID number). An entity with multiple U.S. DOT Operator ID numbers must register each U.S. DOT Operator ID number as a separate pipeline operator. Registrants must provide their pipeline mileage for class 1 pipeline serving unconventional wells, as well as for all class 2, 3, and 4 pipelines.

In addition registrants must provide the country of manufacture for all tubular steel product installed in the prior calendar year (January 1st through December 31st) in Pennsylvania for the exploration, gathering, or transportation of natural gas or hazardous liquids. For purposes of this provision, “tubular steel product” means the actual pipe to

¹ Included in this are Pennsylvania Boroughs that fall within the definition of “pipeline operators.” Such entities, are, however, exempt from paying either the initial or annual registration fees.

² The person or persons listed should have knowledge of the registrants’ Pennsylvania operations and be reasonably available to be contacted by Commission personnel should an emergency arise with those operations.

be used in the transportation of gas and excludes valves as well as other facilities or equipment. Registrants should provide the length of all such tubular steel products in feet. Registrants may rely upon the indication of the country of manufacture on purchase invoices or upon the stamp on the product itself. Registrants should indicate the length of such product installed in the prior year for which the country of manufacture is unknown. The Commission is open to other reasonable, practicable methods to collect this information.

Pipeline operators are responsible to promptly update the Commission with any changes to their contact information. Pipeline operators who fail to register shall be subject to civil penalties as set forth in Section 502 of the Pipeline Act.

ii. Initial Registration and Renewal of Annual Registration.

This annual registration must be submitted to the Commission by March 31st of each year. However, for the 2012 registration only, registration is due by March 16, 2012. The registration is due earlier than usual for the first year in order to commence the Commission's increased gas safety duties under the Pipeline Act as soon as practicable.

As part of the initial implementation of the Pipeline Act, a Secretarial Letter, the Implementation Order, and the Registration Form will be sent to entities which the Commission believes may be pipeline operators pursuant to the Pipeline Act. These entities who are pipeline operators pursuant to the Pipeline Act should complete and return the Registration Form to the Commission by March 16, 2012. Entities who are not pipeline operators pursuant to the Pipeline Act need not register, but should email Commission staff at ra-Act127@pa.gov with a justification in order to be removed from the Commission's mailing list. An entity's determination that they are not required to register under the Pipeline Act is subject to review by the Commission. Any entity that

does not register that is subsequently found to be a jurisdictional pipeline operator under the Pipeline Act may be subject to an enforcement action and fine.

iii. Exemption from Registration.

No registration is required of a petroleum gas distributor who is registered under the Act of June 19, 2002 (P.L. 421, No. 61), known as the Propane and Liquefied Petroleum Gas Act; however such entity must provide proof of registration with Pennsylvania Department of Labor and Industry to the Commission in lieu of registration.

B. Assessment.

As noted above, the Commission is authorized to fund its enforcement of the Pipeline Act's requirement through an annual assessment on pipeline operators (however Pennsylvania Boroughs that fall within the definition of "pipeline operators" are exempt from annual assessments under the Pipeline Act). The Pipeline Act provides for the assessment of pipeline operators in three steps. First, the Commission must establish and maintain the registry of all gas and hazardous liquids pipeline operators discussed above. Second, the Commission must determine the Commission's total annual costs (excluding costs otherwise reimbursed by the Federal Government), plus a reasonable allocation of indirect costs, of its gas and hazardous liquids pipeline safety program. Third, the Commission will assess each pipeline operator for their share of the Commission's costs based on the miles of pipeline operated in the Commonwealth of Pennsylvania.

i. Determination of Commission Costs.

The Commission shall determine an appropriate annual assessment designed to collect the Commission's total annual costs of its gas and hazardous liquids pipeline safety program, plus a reasonable allocation of indirect costs. For assessment purposes, the Commission's total annual costs will exclude the costs otherwise reimbursed by the

Federal Government as well as any costs otherwise recovered through annual registration fees paid by pipeline operators.

The Commission will determine its annual costs based upon its fiscal year, which runs from from July 1st through June 30th. Under the Commission's normal assessment process, assessment payments would be based upon the Commission's approved budget and due after the July 1 start of the fiscal year.

However, for the Commission's 2011-12 fiscal year, the annual assessment for the Commission's costs for the period from February 20, 2012, the effective date of the Pipeline Act, through June 30, 2012 will be estimated. Invoices for this assessment will be issued by March 30, 2012, with payment due no later than April 30, 2012. In order to fund the cost of the Commission's expanded pipeline safety program as soon as practicable though, the Commission requests that pipeline operators submit payment by April 16, 2012, or as soon thereafter as each operator is able.

The annual assessment for the Commission's costs for the 2012-13 fiscal year (July 1, 2012 through June 30, 2013) will also be estimated. Invoices for this assessment will be issued in July 2013, with payment due 30 days thereafter.

For each fiscal year, the Commission will reconcile any over or under collection of the Commission's costs. Due to the need to estimate the costs for the first year of the program, the initial annual reconciliation will occur in the Commission's computation of the assessment for the 2013-14 fiscal year.

For each fiscal year after the 2012-13 fiscal year, the Commission's annual costs for its pipeline safety program under the Pipeline Act will be in accordance with its approved budget.

ii. Assessment of Pipeline Operators.

The assessment to cover the Commission's costs shall be apportioned to pipeline operators (other than Pennsylvania Boroughs) based upon the number of miles of pipeline operated in the previous calendar year. The Commission's Fiscal Office will take the Commission's budgeted costs for its gas and hazardous liquids pipeline safety program and divide that number by the total number of miles of pipelines operated by all pipeline operators in the Commonwealth of Pennsylvania (other than Pennsylvania Boroughs), thereby determining the Commission's cost per mile of pipeline. The Fiscal Office will then create an invoice for each pipeline operator (other than Pennsylvania Boroughs) by multiplying the cost per mile by the number of miles of jurisdictional pipeline of that pipeline operator. The Fiscal Office will then mail an invoice to each pipeline operator (other than Pennsylvania Boroughs), which will be due and payable to the Commission within 30 days of the postmark date of the invoice.

II. Conclusion.

The Pipeline Act expands the Commission's jurisdiction over entities not previously regulated by the Commission and includes a new assessment for the anticipated costs of this pipeline safety program. Therefore, to ensure that our approach is reasonable and consistent with the Pipeline Act, we shall issue this order in tentative form so as to allow interested parties to file formal comments for our consideration before we make this implementation order final. Also, in addition to serving this tentative order on wide set of pipeline entities that are likely to be subject to this new law, we shall also publish this order in the Pennsylvania Bulletin and host a teleconference in which interested persons may ask questions about our tentative implementation plan. The teleconference will be held at 9:00 a.m. on Thursday, January 26, 2012. Due to a limitation on the number of lines that are available, a second session will be held at 10:30 a.m. on the same date if needed to accommodate all requests. To request call-in information and submit questions to be addressed at the teleconference, please email the Commission at ra-Act127@pa.gov by 5 p.m., January 23, 2012. **THEREFORE,**

IT IS ORDERED:

1. Upon issuance of the Final Implementation Order, that all pipeline operators in the Commonwealth of Pennsylvania shall file with the Commission an Initial Registration Form (attached hereto as Appendix A) by March 16, 2012, and an Annual Registration Form by March 31st of each year thereafter, in accordance with the Final Implementation Order and the then-current Pipeline Operator Annual Registration Form.

2. That the Commission's Fiscal Office shall compute the annual assessment for each pipeline operator (other than Pennsylvania Boroughs) based on the pipeline operator's current registration form and in accordance with the Pipeline Act.

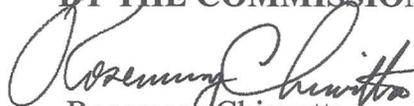
3. That all pipeline operators subject to the Pipeline Act (other than Pennsylvania Boroughs) shall pay their assessment within 30 days of the postmark date of the invoice. For the 2011-12 assessment only, the Commission will issue invoices on March 30, 2012, and payment of these invoices will be due on April 30, 2012. In order to fund the cost of the Commission's expanded pipeline safety program as soon as practicable though, the Commission requests that pipeline operators submit payment by April 16, 2012, or as soon thereafter as each operator is able.

4. That, as part of the initial implementation of the Pipeline Act, a Secretarial Letter, the Tentative Implementation Order and the Registration Form be sent to entities which the Commission believes are likely to be pipeline operators as defined in the Pipeline Act. Entities who are not pipeline operators pursuant to the Pipeline Act need not register, but should email Commission staff at ra-Act127@pa.gov with a justification in order to be removed from the Commission's mailing list.

5. Any interested party may submit comments regarding this Tentative Implementation Order within twenty days of entry of this Order.

6. That a copy of this Tentative Order shall be published in the Pennsylvania Bulletin and posted on the Commission's website.

BY THE COMMISSION



Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: January 12, 2012

ORDER ENTERED: January 12, 2012

