



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

September 26, 2014

Via E-Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission, Bureau of Investigation
and Enforcement v. XTO Energy, Inc. and Mountain Gathering,
LLC
Docket No. C-2014-

Dear Secretary Chiavetta:

Enclosed for filing is the Formal Complaint of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission against XTO Energy, Inc. and Mountain Gathering, LLC in the above referenced case. Copies have been served on the parties of record in accordance with the Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Step M. Wimer".

Stephanie M. Wimer
Prosecutor
PA Attorney ID No. 207522

Enclosures

cc: As per Certificate of Service

NOTICE

A. You must file an Answer within 20 days of the date of service of this Complaint.

The date of service is the mailing date as indicated at the top of the Secretarial Letter. *See* 52 Pa. Code §1.56(a). The Answer must raise all factual and legal arguments that you wish to claim in your defense, include the docket number of this Complaint, and be verified. You may file your Answer by mailing an original to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Or, you may eFile your Answer using the Commission's website at www.puc.pa.gov. The link to eFiling is located under the Filing & Resources tab on the homepage. If your Answer is 250 pages or less, you are not required to file a paper copy. If your Answer exceeds 250 pages, you must file a paper copy with the Secretary's Bureau.

Additionally, a copy should either be mailed to:

Wayne T. Scott, First Deputy Chief Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

Or, emailed to Mr. Scott at: RA-PCCmplntResp@pa.gov

B. If you fail to answer this Complaint within 20 days, the Bureau of Investigation and Enforcement will request that the Commission issue an Order imposing the penalty.

C. You may elect not to contest this Complaint by paying the civil penalty within 20 days. Your check or money order for the civil penalty should be payable to the Commonwealth of Pennsylvania and mailed to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

D. If you file an Answer which either admits or fails to deny the allegations of the Complaint, the Bureau of Investigation and Enforcement will request the Commission to issue an Order imposing the penalty set forth in this Complaint.

E. If you file an Answer which contests the Complaint, the matter will be assigned to an Administrative Law Judge for hearing and decision. The Judge is not bound by the penalty set forth in the Complaint, and may impose additional and/or alternative penalties as appropriate.

F. If you are a corporation, you must be represented by legal counsel. 52 Pa. Code §1.21.

G. Alternative formats of this material are available for persons with disabilities by contacting the Commission's ADA Coordinator at 717-787-8714.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2014
	:	
XTO Energy, Inc.	:	
	:	
and	:	
	:	
Mountain Gathering, LLC	:	
Respondents	:	

FORMAL COMPLAINT

NOW COMES the Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement (“I&E”), by its prosecuting attorneys, pursuant to section 501 of the Gas and Hazardous Liquids Pipelines Act, 58 P.S. § 801.501, and files this Formal Complaint against XTO Energy, Inc. (“XTO Energy”) and Mountain Gathering, LLC (“Mountain Gathering”) (collectively, “Respondents”) alleging violations of the Gas and Hazardous Liquids Pipelines Act, 58 P.S. § 801.101 *et seq.* (“Act 127”), Pennsylvania Code and Code of Federal Regulations. In support of its Formal Complaint, I&E respectfully alleges the following:

Parties and Jurisdiction

1. The Pennsylvania Public Utility Commission (“PUC” or “Commission”) with a mailing address of P.O. Box 3265, Harrisburg, PA 17105-3265, is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate pipeline operators pursuant to section 501(a) of Act 127, 58 P.S. § 801.501(a).

2. Complainant is the Commission’s Bureau of Investigation and Enforcement and is the bureau established to take enforcement actions against public utilities and other entities subject to the Commission’s jurisdiction pursuant to 66 Pa. C.S. § 308.2(a)(11); *See also Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (August 11, 2011) (delegating authority to initiate proceedings that are prosecutory in nature to I&E).

3. Complainant’s prosecuting attorneys are as follows:

Stephanie M. Wimer
Prosecutor
stwimer@pa.gov
717.772.8839

Wayne T. Scott
First Deputy Chief Prosecutor
wascott@pa.gov

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

4. Respondents are XTO Energy, Inc. and Mountain Gathering, LLC, with a main mailing address of 810 Houston Street, Fort Worth, TX 76102.

5. XTO Energy and Mountain Gathering are “pipeline operators” as that term is defined at 58 P.S. § 801.102 as they “own[] or operate[] equipment or facilities in [the Commonwealth of Pennsylvania] for the transportation of gas or hazardous liquids by pipeline or pipeline facility regulated under Federal pipeline safety laws.”

6. Section 501(a) of Act 127, 58 P.S. § 801.501(a), authorizes and obligates the Commission to supervise and regulate pipeline operators within this Commonwealth consistent with federal pipeline safety laws.

7. Section 501(a)(7) of Act 127, 58 P.S. § 801.501(a)(7), authorizes the Commission to enforce federal pipeline safety laws and, after notice and opportunity for a hearing, impose civil penalties and take other appropriate enforcement action.

8. Section 502(a) of Act 127, 58 P.S. § 801.502(a), authorizes the Commission to impose civil penalties on pipeline operators who violate the Act. Under section 502(a), pipeline operators can be subject to a civil penalty provided under federal pipeline safety laws or section 3301(c) of the Public Utility Code, 66 Pa.C.S. § 3301(c), whichever is greater. Section 3301(c) of the Public Utility Code, 66 Pa.C.S. § 3301(c), allows for the imposition of a separate civil penalty for each violation and each day’s continuance of such violation(s).

9. Respondents, as pipeline operators, are subject to the power and authority of this Commission pursuant to Section 501(b) of Act 127, 58 P.S. § 801.501(b), which requires pipeline operators to comply with the Act and the terms and conditions of the orders issued under the Act.

10. Pursuant to the Commission's regulations at 52 Pa. Code § 59.33(b), the Commission's Gas Safety Division, which is part of I&E, also has the authority to enforce federal gas pipeline safety regulations set forth in 49 U.S.C.A. §§ 60101, *et seq.* and implemented in 49 C.F.R. Parts 191-193, 195 and 199, 49 C.F.R. §§ 191-193, 195 and 199.

11. Pursuant to the provisions of the applicable Commonwealth and federal statutes and regulations, the Commission has jurisdiction over the subject matter of this complaint and the actions of Respondents related thereto.

Background

12. Pursuant to 49 C.F.R. § 192.8, pipeline operators are required to determine if the onshore pipelines they operate are onshore gathering lines, and then whether the onshore gathering lines are regulated. Regulated onshore gathering lines are subject to inspection and enforcement, reporting obligations and other requirements. In addition, pipeline operators must determine the class locations of regulated onshore pipelines.

13. Prior to the time that Act 127 became effective on February 20, 2012, XTO Energy had acquired assets from other companies that operate pipelines. In July of 2008, XTO Energy acquired approximately 900 miles of pipeline in Pennsylvania and West Virginia from Linn Energy, LLC ("Linn"). In June of 2011, XTO Energy acquired pipeline from Phillips Resources, Inc. (Phillips Production Co.) and TWP, Inc. (T. W. Phillips Supply Corp.) (collectively, "Phillips").

14. Shortly after the acquisition of Linn pipeline in 2008, XTO Energy established Mountain Gathering, which inherited pipelines formerly operated by Linn. Mountain Gathering also constructed new gathering lines.

15. On XTO Energy's 2008 annual report to the Pipeline and Hazardous Materials Safety Administration ("PHMSA"), XTO Energy reported ten miles of class 2 gathering pipelines and three miles of class 3 gathering pipelines operating in Pennsylvania that are regulated by PHMSA.

16. XTO Energy's 2009 annual report to PHMSA reflects the same mileage in Pennsylvania that is jurisdictional to PHMSA as its 2008 annual report – ten miles of class 2 and three miles of class 3 gathering pipelines.

17. Mountain Gathering did not file 2008 or 2009 annual reports with PHMSA.

18. XTO Energy and Mountain Gathering did not file 2010 annual reports with PHMSA and, therefore, no miles of regulated onshore gathering lines were identified despite having been previously reported by XTO Energy.

19. As previously stated, Act 127 became effective on February 20, 2012.

20. Pursuant to Act 127, XTO Energy and Mountain Gathering are required to report to the Commission, on or before March 31 of each year, their total intrastate regulated transmission, distribution and gathering pipeline miles in operation for the transportation of gas and hazardous liquids during the prior calendar year.

21. The Gas Safety Division of I&E relies on pipeline operators to completely and accurately report jurisdictional pipeline miles so that the Gas Safety Division may inspect those facilities.

22. XTO Energy and Mountain Gathering reported zero regulated pipeline miles on their respective 2011 Pennsylvania Pipeline Operator Annual Registration Forms.

23. XTO Energy also reported zero regulated pipeline miles on its 2012 Pennsylvania Pipeline Operator Annual Registration Form.

24. Mountain Gathering reported 14 miles of regulated pipeline on its 2012 Pennsylvania Pipeline Operator Annual Registration Form for its newly constructed pipelines, which did not include pipeline that was previously acquired from other companies.

25. On June 3, 2013, Paul J. Metro, Gas Safety Manager, and Christopher E. Demarco, Gas Safety Supervisor, met with XTO Energy and Mountain Gathering in Warrendale, Pennsylvania. As a result of the meeting, the Gas Safety Division determined that XTO Energy and Mountain Gathering had not performed class location studies for pipeline acquired by Linn and Phillips several years earlier.

26. By letter dated August 22, 2013 to XTO Energy and Mountain Gathering, the Gas Safety Division directed that all incomplete class location studies for each acquired pipeline facility be performed within thirty (30) days.

27. On August 26, 2013, Gas Safety Inspector Andrew Geibel conducted an

inspection of XTO Energy's and Mountain Gathering's pipeline facilities and records for facilities located in Indiana County, Pennsylvania.

28. Mr. Geibel reviewed the class location study of facilities acquired from Linn or Phillips that are located in Indiana County. The study revealed 5.3 miles of class three onshore gathering pipelines and 0.9 miles of class two onshore gathering pipelines in Indiana County that are owned and operated by either XTO Energy or Mountain Gathering and were in operation during the 2011 and 2012 calendar years.

29. In September of 2013, XTO Energy admitted to Paul J. Metro, Christopher E. Demarco, and Andrew Geibel of the Gas Safety Division that it had not classified all of the pipelines in Pennsylvania that it previously acquired from Linn and Phillips, and that it completed Pennsylvania's annual registration forms without first identifying all possible jurisdictional pipelines.

30. By prolonging the completion of class location studies of acquired pipeline, XTO Energy and Mountain Gathering avoided being regulated for safety purposes and avoided paying a fair share of assessments to the Commission.

31. The Commission would have assessed XTO Energy or Mountain Gathering, depending on which company operated the pipelines in question, \$3,069 for the 2012-13 fiscal year. This represents a \$495 cost per mile of pipeline that was in operation in Indiana County during the 2011 calendar year.

32. The Commission would have assessed XTO Energy or Mountain Gathering, depending on which company operated the pipelines in question, \$3,925 for

the 2013-14 fiscal year. This represents a \$633 cost per mile of pipeline that was in operation in Indiana County during the 2012 calendar year.

33. According to XTO Energy, it is continuing to review and classify the facilities that it purchased from Linn and Phillips. Additional mileage of jurisdictional pipeline was identified in the 2013 Pennsylvania Pipeline Operator Annual Registration Form: XTO Energy reported 10 miles of class two and 3 miles of class three jurisdictional pipeline. Mountain Gathering reported 26 miles of class two and 11 miles of class three jurisdictional pipeline. XTO Energy/Phillips Exploration, Inc. reported 11 miles of class two and 2 miles of class three jurisdictional pipeline.

Violations

34. I&E has reviewed the actions of XTO Energy and Mountain Gathering, and alleges as follows:

a. XTO Energy and Mountain Gathering failed to accurately report to the Commission their total intrastate regulated transmission, distribution and onshore gathering pipelines in that they did not report *at least* 5.3 miles of regulated class 3 onshore gathering pipelines and 0.9 miles of regulated class 2 onshore gathering pipelines on their 2011 and 2012 Pennsylvania Pipeline Operator Annual Registration Forms.

This is a violation of 58 P.S. § 801.503(d).

b. XTO Energy and Mountain Gathering failed to pay an appropriate assessment to the Commission for the 2012-13 and 2013-14 fiscal years in that the reported jurisdictional pipeline miles, upon which the assessments were based, were less than the actual jurisdictional pipeline miles in operation.

This is a violation of 58 P.S. § 801.503(b).

c. XTO Energy and Mountain Gathering failed to determine whether the gathering pipelines they acquired from Linn and Phillips are regulated onshore gathering lines in that they did not completely evaluate and classify the pipelines they acquired prior to filing 2011 and 2012 Pennsylvania Pipeline Operator Annual Registration Forms.

This is a continuing violation of 49 C.F.R. § 192.8 and 52 Pa. Code § 59.33.

d. XTO and Mountain Gathering failed to follow their procedures regarding class location studies in that they did not continually survey their facilities to determine the class locations of their pipelines.

This is a continuing violation of 49 C.F.R. § 192.613 and 52 Pa. Code § 59.33.

WHEREFORE, for all the foregoing reasons, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission respectfully requests that:

a. After consideration of the record, the Office of Administrative Law Judge and the Commission find XTO Energy and Mountain Gathering in violation of each and every count as set forth herein, and that XTO Energy and Mountain Gathering be ordered to pay one civil penalty in the amount of \$100,000 pursuant to 66 Pa.C.S. § 3301(c). Said payment shall be made by certified check payable to the Commonwealth of Pennsylvania and presented to the undersigned prosecutors within twenty (20) days of the date of the Commission's order sustaining this complaint;

b. That XTO Energy and/or Mountain Gathering, depending on which company operated the pipelines in question, be directed to pay an assessment of \$6,994 for the 2012-13 and 2013-14 fiscal year(s);

c. That XTO Energy and Mountain Gathering be ordered to determine whether their onshore pipelines in Pennsylvania, including those assets that are currently classified as production lines, are regulated gathering lines pursuant to 49 C.F.R. § 192.8, and report the results of their determination to the Gas Safety Division within thirty (30) days of the date on which a final order sustaining this complaint is entered; and

d. That the Commission grant such further relief as is just and reasonable.

Respectfully submitted,



Stephanie M. Wimer
Prosecutor
PA Attorney ID No. 207522

Wayne T. Scott
First Deputy Chief Prosecutor
PA Attorney ID No. 29133

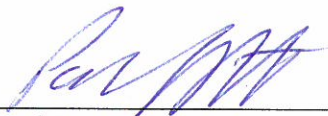
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

Date: September 26, 2014

VERIFICATION

I, Paul J. Metro, Manager, Gas Safety Division, Bureau of Investigation and Enforcement, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect the Bureau will be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Date: 26 SEP 14



Paul J. Metro, Manager
Gas Safety Division
Bureau of Investigation and Enforcement
PA. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

(717) 787-1063

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Service by First Class Mail and Electronic Mail:

Alice Ratcliffe
XTO Energy, Inc.
810 Houston Street
Fort Worth, TX 76102

alice_ratcliffe@xtoenergy.com



Stephanie M. Wimer
Prosecutor
PA Attorney ID No. 207522

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
717.772.8839
stwimer@pa.gov

Dated: September 26, 2014