



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

December 4, 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-2014-2444722
I&E Reply to New Matter

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Bureau of Investigation and Enforcement's Reply to the New Matter of XTO Energy, Inc. and Mountain Gathering, LLC in the above-referenced proceeding. 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 "Stephanie M. Wimer". The signature is written in a cursive style.

Stephanie M. Wimer
Prosecutor
PA Attorney ID No. 207522

Enclosures

cc: As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	C-2014-2444722
	:	
XTO Energy, Inc.	:	
and	:	
Mountain Gathering, LLC	:	
Respondents	:	

REPLY TO NEW MATTER

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

NOW COMES, the Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (Commission), Complainant in the above-docketed matter, by and through its prosecuting attorneys, and replies to the New Matter of XTO Energy, Inc. (XTO Energy) and Mountain Gathering, LLC (Mountain Gathering) (collectively, Respondents), pursuant to 52 Pa. Code § 5.63(a). In support thereof, I&E avers as follows:

I. BACKGROUND

XTO Energy and Mountain Gathering are pipeline operators as defined by the Gas and Hazardous Liquids Pipelines Act, 58 P.S. § 801.101 *et seq.* (hereinafter referred to as Act 127). As pipeline operators, Respondents are required to “report to the Commission [their] total intrastate regulated transmission, regulated distribution and regulated onshore gathering pipeline miles in operation for the transportation of gas and hazardous liquids

in this Commonwealth during the prior calendar year.” 58 P.S. § 801.503(d). Such reports must be submitted on or before March 31 of each year.

XTO and Mountain Gathering reported zero regulated transmission, distribution and onshore gathering pipeline miles in operation in the Commonwealth during the 2011 calendar year. Similarly, XTO reported zero regulated transmission, distribution and onshore gathering pipeline miles in operation in the Commonwealth during the 2012 calendar year. Mountain Gathering reported 14 miles of regulated pipeline on its 2012 Pennsylvania Pipeline Operator Annual Registration Form, which was in operation in the Commonwealth during the 2012 calendar year.

On August 26, 2013, staff from the Commission’s Gas Safety Division conducted an inspection of XTO Energy’s and Mountain Gathering’s pipeline facilities and records located in Indiana County, Pennsylvania. The Gas Safety inspection examined the class location studies of such facilities. The class location studies revealed 5.3 miles of class three onshore gathering pipeline and 0.9 miles of class two onshore gathering pipeline located in Indiana County alone, which are owned and operated by XTO Energy and Mountain Gathering and were in operation during the 2011 and 2012 calendar years. These miles of regulated pipeline had not been reported to the Commission.

The Gas Safety Division is aware that XTO Energy and Mountain Gathering acquired miles of pipeline from other pipeline companies, namely Linn Energy, LLC (Linn) and Phillips Production Company (Phillips). However, the acquisitions of Linn and Phillips took place in July of 2008 and June of 2011, respectively, thus allowing

ample time for Respondents to classify the acquired pipeline and accurately report it to the Commission when Act 127 became effective on February 20, 2012.

On September 26, 2014, I&E filed a Formal Complaint (Complaint) against Respondents at Docket No. C-2014-2444722, alleging that Respondents violated Act 127, the Pennsylvania Code, and Code of Federal Regulations (C.F.R.). Specifically, I&E alleges that Respondents:

- (1) Failed to accurately report to the Commission their total intrastate regulated transmission, distribution and onshore gathering pipelines;
- (2) Failed to pay an appropriate assessment to the Commission based on the existence of regulated pipeline miles that were not reported;
- (3) Failed to determine whether the pipeline miles acquired from Linn and Phillips are regulated onshore gathering lines; and
- (4) Failed to continually survey facilities to determine the class locations of pipeline.

On November 14, 2014, Respondents, through counsel, filed their Answer with New Matter, at the above docket.

To the extent that there are factual and legal discrepancies between I&E's Complaint and Respondent's Answer, I&E fully intends to address those matters at hearing and in brief.

II. REPLY TO NEW MATTER

35. Denied. To the extent that Respondents attempt to incorporate any and all assertions made in paragraphs 1-34 as New Matter, this is denied. Pursuant to 52 Pa. Code § 5.62, affirmative defenses must be set forth under the heading of "New Matter."

New matter is limited to material facts that are not merely denials of the averments of the preceding pleadings. 52 Pa. Code § 5.62(b). Respondents cannot avoid these requirements by incorporating all paragraphs of their Answer as New Matter. I&E rejects this attempt and denies these allegations.

36. Admitted. The relief asserted in I&E's Formal Complaint relating to the provisions at 52 Pa. Code § 59.33 was raised in conjunction with federal gas pipeline safety regulations 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. By way of further answer, Respondent is required to abide by Act 127, which requires pipeline operators to adhere to the safety standards and regulations for pipeline operators under the federal pipeline safety laws as implemented in 49 C.F.R. Subtitle B Ch. I Subch. D (relating to pipeline safety). I&E will amend its Complaint accordingly.

37. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and proof thereof is demanded. To the extent a response is required, these allegations are denied.

38. Denied. I&E is without sufficient knowledge as to the "aim" of the Respondents. By way of further answer, Respondents have not, thus far, met, let alone exceeded, any regulatory and reporting requirements imposed upon them by Act 127 and the Commission. As to the remainder of this Paragraph, I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and proof thereof is demanded. To the extent a response is required, these allegations are denied.

39. Denied. It is the position of I&E that any and all pipeline that was not reported by Respondents pursuant to Act 127 is implicated in I&E's Complaint. As to the remainder of this Paragraph, I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and proof thereof is demanded. To the extent a response is required, these allegations are denied.

40. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and proof thereof is demanded. By way of further answer, the Respondents have the responsibility to comply with the law and have failed to do so. To the extent a response is required, these allegations are denied.

41. Admitted in part and denied in part. It is admitted that XTO Energy acquired certain natural gas pipeline assets from Linn in July 2008. As to the remainder of this Paragraph, I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and proof thereof is demanded. To the extent a response is required, these allegations are denied.

42. Admitted in part and denied in part. It is admitted that XTO Energy took legal title to and physical possession of certain natural gas pipeline assets from Linn. As to the remainder of this Paragraph, I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and proof thereof is demanded. To the extent a response is required, these allegations are denied.

43. Denied. It is denied that XTO Energy maintains a well-developed standard set of pipeline review protocols that are utilized to identify and classify — for possible regulatory reporting — acquired, transferred, or operated gas pipeline assets that were not

built by XTO Energy in that XTO Energy was unable to identify and classify gas pipelines acquired by it at least six years ago, in 2008. As to the remainder of this Paragraph, I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and proof thereof is demanded. To the extent a response is required, these allegations are denied.

44. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and proof thereof is demanded. To the extent a response is required, these allegations are denied.

45. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and proof thereof is demanded. To the extent a response is required, these allegations are denied.

46. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and proof thereof is demanded. To the extent a response is required, these allegations are denied.

47. Admitted in part and denied in part. It is admitted that in its annual report to the Pipeline and Hazardous Materials Safety Administration (PHMSA) for the 2008 and 2009 calendar years, XTO reported ten miles of Class 2 gathering pipeline and three miles of Class 3 gathering pipeline operating in Pennsylvania. It is further admitted that Mountain Gathering did not file 2008 or 2009 annual reports with PHMSA related to pipeline operating in Pennsylvania. As to the remainder of this Paragraph, I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and

proof thereof is demanded. To the extent a response is required, these allegations are denied.

48. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and proof thereof is demanded. To the extent a response is required, these allegations are denied.

49. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and proof thereof is demanded. To the extent a response is required, these allegations are denied.

50. Admitted in part and denied in part. It is admitted that in its annual report to PHMSA for the 2009 calendar year, XTO reported ten miles of Class 2 gathering pipeline and three miles of Class 3 gathering pipeline operating in Pennsylvania. It is also admitted that Mountain Gathering did not file a 2009 annual report with PHMSA related to pipeline operations in Pennsylvania. As to the remainder of this Paragraph, I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and proof thereof is demanded. To the extent a response is required, these allegations are denied.

51. Admitted in part and denied in part. It is admitted that XTO Energy reported no pipeline mileage in Pennsylvania to PHMSA in 2010. It is further admitted that Mountain Gathering reported no pipeline mileage in Pennsylvania to PHMSA in 2008 and 2009. As to the remainder of this Paragraph, I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and proof thereof is demanded. To the extent a response is required, these allegations are denied.

52. Admitted in part and denied in part. It is admitted that XTO Energy assumed operational control of the Phillips pipeline assets in 2011. As to the remainder of this Paragraph, I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and proof thereof is demanded. To the extent a response is required, these allegations are denied.

53. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and proof thereof is demanded. To the extent a response is required, these allegations are denied.

54. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and proof thereof is demanded. To the extent a response is required, these allegations are denied.

55. Admitted in part and denied in part. It is admitted that Pennsylvania state pipeline reporting under Act 127 had not yet become effective in 2011 as Act 127 became effective on February 20, 2012. However, pursuant to Act 127, pipeline operators were required to report their intrastate regulated pipeline miles to the Commission that were in operation during the 2011 calendar year. It is further admitted that XTO Energy reported 329 miles of Class 1 conventional pipeline to the Commission for the 2011 calendar year. As to the remainder of this Paragraph, I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and proof thereof is demanded. To the extent a response is required, these allegations are denied.

56. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and proof thereof is demanded. To the extent a response is required, these allegations are denied.

57. Admitted in part and denied in part. It is admitted that XTO Energy reported to the Commission for the 2012 calendar year 876 miles of Class 1 conventional pipeline and no Class 2, 3, or 4 pipeline miles. It is admitted that of the 876 miles of Class 1 conventional pipeline, 221 miles were reported to be located in Indiana County. It is further admitted that Mountain Gathering reported to the Commission for the 2012 calendar year 140 unconventional miles of unconventional Class 1 gathering, 6 miles of Class 2 pipeline, and 8 miles of Class 3 pipeline. As to the remainder of this Paragraph, I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and proof thereof is demanded. To the extent a response is required, these allegations are denied.

58. Denied. It is denied that registering as a pipeline operator and reporting mileage to the Commission after Act 127 became effective constitutes a demonstration of XTO Energy's "good faith" and "intention to cooperate." As a pipeline operator, XTO Energy is required to abide by Act 127. It is denied that Act 127 exempts pipeline operators operating conventional Class 1 pipeline in Pennsylvania from registering as a pipeline operator and reporting mileage. It is also denied that XTO Energy's duty to report its pipeline miles to the Commission pursuant to Act 127 was in any way questionable or confusing. By way of further answer, Act 127 speaks for itself.

59. Admitted in part and denied in part. It is admitted that the Gas Safety Division asked XTO Energy and Mountain Gathering to treat certain pipeline assets as “gathering” and provide pipeline classifications of those assets. It is denied that such assets are non-jurisdictional.

60. Denied. The Gas Safety Division asked XTO Energy to provide a mapping of its pipeline system so that XTO Energy, as well as excavators using the Pennsylvania One Call System, would be able to locate XTO Energy’s pipelines within 18 inches of each side of the pipeline. The Gas Safety Division provided XTO Energy with numerous opportunities to classify and map its assets.

61. Denied. Respondents are obligated to classify their pipelines pursuant to federal pipeline safety laws. It is denied that Gas Safety imposed “strict” deadlines regarding the classification of pipelines that had been acquired and under the control of XTO Energy and Mountain Gathering for several years. As to the remainder of this Paragraph, I&E is without knowledge sufficient to form a belief as to the truth of this matter and proof thereof is demanded. To the extent a response is required, this allegation is denied.

62. Denied. I&E is without knowledge sufficient to form a belief as to the truth of this matter and proof thereof is demanded. To the extent a response is required, this allegation is denied.

63. Denied. It is specifically denied that XTO Energy has been hampered by “unrealistic” timing demands imposed by the Gas Safety Division. XTO Energy and Mountain Gathering acquired pipeline assets in 2008 and 2011 and, as of this date, have

failed to completely classify the pipeline pursuant to federal pipeline safety regulations. As to the remainder of this Paragraph, I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and proof thereof is demanded. To the extent a response is required, these allegations are denied.

64. Denied. It is specifically denied that Respondents have worked scrupulously and in good faith to respond to the Gas Safety Division.

65. Admitted in part and denied in part. It is admitted that both Act 127 and the federal regulations at 49 C.F.R. § 192.3 apply to pipeline operators that are engaged in the “transportation of gas,” which is generally defined as the “gathering, transmission, or distribution” of gas by pipeline. As to the remainder of this Paragraph, I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and proof thereof is demanded. To the extent a response is required, these allegations are denied.

66. Denied. This Paragraph states a conclusion of law to which no response is required and is deemed denied. By way of further answer, RP-80 and the federal pipeline safety regulations as set forth in 49 C.F.R. Part 192 and 49 C.F.R. § 192.8(a) speak for themselves.

67. Denied. This Paragraph states a conclusion of law to which no response is required and is deemed denied. By way of further answer, RP-80 speaks for itself.

68. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and proof thereof is demanded. By way of further answer, I&E submits that had the Respondents actually made a good faith attempt to efficiently

comply with the law and perform these classifications, they would have been completed long ago. To the extent a response is required, these allegations are denied.

69. Denied. It is specifically denied that Respondents have not been dilatory in their efforts to classify and report jurisdictional gas pipeline to the Commission under Act 127 in that Respondents have not classified and reported pipeline acquired over 6 years ago. As to the remainder of this Paragraph, I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and proof thereof is demanded. To the extent a response is required, these allegations are denied.

70. Denied. It is denied that the Gas Safety Division imposed “unrealistic classification and mapping deadlines” [*sic*] on XTO Energy or Mountain Gathering. It is further denied that requiring Respondents to classify and report pipelines acquired more than six years ago represents an “unrealistic” deadline. By way of further answer, Respondents have a duty to classify their pipelines and report those pipelines to the Commission so that the Gas Safety Division may inspect regulated, intrastate pipelines to ensure compliance with the federal pipeline safety laws.

71. Denied. It is denied that the Gas Safety Division does not “understand” the process of classifying pipelines. It is further denied that the Gas Safety Division has imposed and demanded unreasonably short deadlines on Respondents related to the classification of pipelines that they purchased and have assumed operational control over since 2008 and 2011. The Respondents should have understood and efficiently complied with the law.

72. Denied. It is denied that the compliance process related to Act 127 is in its early stages. The compliance process related to Act 127 has been implemented and in effect for over two years. *See Act 127 of 2011- The Gas and Hazardous Liquids Pipeline Act; Assessment of Pipeline Operators*, Docket No. M-2012-2282031 (Final Implementation Order entered February 17, 2012). *See also Act 127 of 2011 – The Gas and Hazardous Liquids Pipeline Act; Assessment of Pipeline Operators – Jurisdiction over Class 1 Transmission*, Docket No. M-2012-2282031 (Final Order entered June 7, 2012).

73. Denied. It is specifically denied that Respondents are proceeding with due diligence in their compliance efforts in that Respondents have failed to classify their pipelines for six years. It is also denied that it is “unfair and inappropriate” to seek civil and other penalties against natural gas pipeline owners and operators, like XTO and Mountain Energy, who take six years to classify and report pipelines. Without these penalties, one can only imagine how long it would take Respondents to comply.

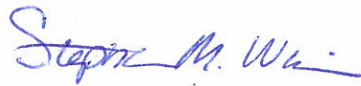
74. Denied. This paragraph represents a legal argument for which no response is required. By way of further answer, it is strictly denied that application of the Commission’s Policy Statement on Factors and Standards for Evaluating Litigated and Settled Proceedings, 52 Pa. Code § 69.1201, confirms that civil penalties are neither warranted nor justified.

75. Denied. It is specifically denied that Respondents have made efforts to timely and in good faith comply with the reporting requirements of Act 127 in that Respondents have failed to classify their pipelines for six years, in some instances.

Furthermore, Respondents have a duty to classify and report their pipelines. It is denied that “unique, special and dynamic circumstances” apply to XTO Energy and Mountain Gathering that would excuse it from paying a civil penalty for violating Act 127 and federal pipeline safety laws.

WHEREFORE, for all the foregoing reasons, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission respectfully requests that the Office of Administrative Law Judge and the Commission dismiss Respondents' New Matter and find Respondents to be in violation of each and every count set forth in the Complaint.

Respectfully submitted,



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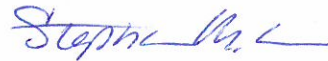
Dated: December 4, 2014

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:

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Dated: December 4, 2014