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May 18, 2015

VIA E-FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission, Bureau of Investigation and
Enforcement v. XTO Energy Inc. and Mountain Gathering, LLC
Docket No. C-2014-2444722

Dear Secretary Chiavetta:

On behalf of XTO Energy Inc., Mountain Gathering, LLC, and the Bureau of Investigation and Enforcement, I have enclosed for electronic filing the Joint Petition for Full Settlement of Proceeding with respect to the above-captioned matter.

Copies have been served on all parties as indicated in the attached Certificate of Service.

Very truly yours,



Alan M. Seltzer

AMS/tlg

Enclosure

cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2014-2444722
	:	
XTO Energy, Inc. and Mountain Gathering,	:	
LLC,	:	
	:	
Respondent	:	

**JOINT PETITION FOR FULL SETTLEMENT OF
PROCEEDING**

XTO Energy, Inc. (“XTO”), Mountain Gathering, LLC. (“Mountain Gathering”), and the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement (“I&E”), by their respective counsel, respectfully submit to the Pennsylvania Public Utility Commission (“Commission” or “PaPUC”) this Joint Petition for Full Settlement of Proceeding, including the attached Statement in Support of the Settlement from I&E (Attachment A) and the Statement in Support of the Settlement from the Company (Attachment B) (together the “Joint Petition”). The Company and I&E are collectively referred to herein as the “Joint Petitioners.”

The terms and conditions of this Joint Petition represent a comprehensive settlement (the “Settlement”) of all issues presently pending in this proceeding. The Joint Petitioners represent that this comprehensive Settlement is in the public interest and, therefore, request that the Commission approve, without modification, the proposed Settlement as set forth in the Joint Petition. In support of their request, the Joint Petitioners state as follows:

I. BACKGROUND

1. The parties to this Joint Petition are I&E, by its prosecuting attorneys, P.O. Box 3265, Harrisburg, PA 17105-3265, XTO Energy, Inc. and Mountain Gathering, LLC (jointly and severally, the “Company”) with a principal place of business at 810 Houston Street, Fort Worth, TX 76102.

2. The PaPUC is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate pipeline operators pursuant to Section 501(a) of the Gas and Hazardous Liquids Pipelines Act (“Act 127”), 58 P.S. § 801.501(a).

3. I&E is the entity established by the Pennsylvania Public Utility Code (“Code”) to take appropriate enforcement actions and perform such other functions as the Commission deems necessary for the proper work of the Commission. 66 Pa.C.S. § 308.2(a)(11) and (12). *See also Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered April 11, 2011).

4. 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. The Company owns and/or operates conventional and unconventional gas production and gathering pipeline facilities in Pennsylvania. As such, the Company is a “pipeline operator” as that term is defined at 58 P.S. § 801.102 in that it “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.”

5. Section 502(a) of Act 127, 58 P.S. § 801.502(a), authorizes the Commission to impose civil penalties on pipeline operators for violations of Act 127. A pipeline operator may

be subject to the civil penalties provided under Federal Pipeline Safety Laws or Section 3301(c) of the Code, 66 Pa.C.S. § 3301(c), whichever is greater.

6. On September 26, 2014, I&E filed a Formal Complaint (“Complaint”) with the Commission against the Company. The Complaint alleges, among other things, that the Company failed to properly report and pay the related assessments to the Commission in connection with at least 5.3 miles of regulated class 3 onshore gathering pipelines and 0.9 miles of regulated class 2 onshore gathering pipelines in operation in Indiana County, Pennsylvania on the Company’s 2011 and 2012 annual registration forms as required by Act 127. The Complaint also alleges that the Company failed to determine whether certain pipelines acquired from previous owners were regulated onshore gathering lines for Act 127 reporting purposes and that the Company neglected to timely complete pipeline class location studies for certain acquired facilities.

7. The Complaint requests that the Commission: (a) impose a civil penalty of \$100,000 against the Company pursuant to Section 3301 of the Code, 66 Pa.C.S. § 3301, and pay an assessment of \$6,994 for the alleged under-reporting of onshore gas gathering pipeline miles in accordance with Act 127 for the 2012-13 and 2013-14 fiscal years; and (b) order the Company to determine whether its onshore Pennsylvania pipelines are regulated gathering lines pursuant to Section 192.8 of the Federal Pipeline Safety Regulations, 49 C.F.R. § 192.8.

8. By letter dated October 8, 2014, the Company requested an unopposed 30-day extension of time to file responsive pleadings to I&E’s Complaint.

9. The Company’s requested extension of time was granted by Secretarial Letter dated October 9, 2014.

10. On November 14, 2014, the Company filed an Answer and New Matter to the Complaint denying the material allegations in the Complaint.

11. On December 4, 2014, I&E filed a Reply to New Matter generally denying the material averments in the Company's New Matter and reaffirming its position that the Company had an ongoing obligation on and after the effective date of Act 127 to timely complete its evaluation of all its third party acquired gas pipelines and report the jurisdictional mileage to the Commission fully and timely in accordance with Act 127.

II. ALLEGED VIOLATIONS

12. If this matter had been litigated rather than resolved through an exchange of information and settlement discussions, I&E would have contended that the Company violated certain provisions of Act 127 and the Code of Federal Regulations in that:

- A. The Company 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. If proven, this is a violation of 58 P.S. § 801.503(d).
- B. The Company 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. If proven, this is a violation of 58 P.S. § 801.503(b).
- C. The Company failed to determine whether the gathering pipelines they acquired from Linn Energy, LLC ("Linn") and Phillips Resources, Inc. and TWP, Inc. (collectively, "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. If proven, this is a continuing violation of 49 C.F.R. § 192.8.
- D. The Company 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. If proven, this is a continuing violation of 49 C.F.R. § 192.613.

13. If this matter had been litigated, the Company would have denied and defended the above-referenced allegations as follows:

- A. The Company owns and operates hundreds of miles of gas pipelines in Pennsylvania and the only ones implicated by the Complaint are those relatively few miles of pipeline acquired or transferred by merger from third parties and not those pipelines that were constructed and developed by the Company;
- B. The Company, consistent with how their previous owners had classified them and standard industry practice, treated the gas pipelines acquired or transferred by merger from third parties as *production* facilities that were non-jurisdictional to the Commission under Act 127;
- C. The nature and quality of the data provided or made available to the Company with respect to the third party pipelines at issue in the Complaint was limited, incomplete and of poor quality;
- D. The Company continually acted to review, evaluate and scrub the pipeline data but the classification process was hampered by poor data quality, forested field conditions, limited availability of geographic information system (“GIS”) data and conflicting representations from field personnel regarding the location and other physical and operating characteristics of the third party acquired pipelines;
- E. When Act 127 became effective, the Commission’s Gas Safety Division personnel asked that portions of the third party acquired gas pipelines be treated as “gathering,” consistent with Federal Pipeline Safety Regulations, and that the Company provide pipeline classifications for such assets, notwithstanding their prior classification as non-jurisdictional “production” facilities;
- F. The Company has been fully engaged in classifying the third party acquired pipeline assets consistent with federal standards (i.e., RP-80), but that process is complex and time-consuming, especially when the underlying pipeline data is inaccurate, non-existent or both, and accurate data could not be obtained quickly;
- G. Based upon its completed line classification studies, the Company over-reported pipeline mileage to the Commission under Act 127 rather than under-reported mileage as alleged.

III. TERMS AND CONDITIONS OF SETTLEMENT

14. Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Joint Petitioners held a series of settlement discussions. These discussions culminated in this Settlement. The terms and conditions of the Settlement, for which the Joint Petitioners seek Commission approval, are set forth below.

A. Specific Settlement Provisions

15. *Class Location Studies* – the Company agreed to fully complete, and fully completed, class location studies on or before March 31, 2015, on all pipeline owned and operated by the Company that is to be reported to the Commission pursuant to Act 127, and identified any and all jurisdictional pipeline miles on the Company's 2014 Pennsylvania Pipeline Operator Annual Registration Forms.

16. *Civil Penalty* - The Company shall pay a civil penalty in the amount of Thirty Thousand Dollars (\$30,000), pursuant to 66 Pa.C.S. § 3301. Said payment shall be made by wire transfer directly to the Commonwealth of Pennsylvania (utilizing wire transfer instructions provided by I&E to the Company) within forty (40) days of the date of entry of a final and non-appealed Opinion and Order of the PaPUC, not the subject of a petition for reconsideration, approving the Settlement in its entirety without modification or amendment.

17. I&E acknowledges that the Company has been forthcoming with information and has cooperated with I&E and the PaPUC's Gas Safety Division since the filing of the Complaint.

18. The Settlement resolves all issues regarding the Company's gas pipeline reporting obligations to the PaPUC under Act 127 for calendar years 2011, 2012 and 2013 including, without limitation, the claims made and reasonably related to those contained in the I&E Complaint filed at PaPUC Docket No. C-2014-2444722.

19. This Settlement, including, without limitation, the civil penalty, fully resolves I&E's allegations that the process the Company took to complete a comprehensive evaluation and classification of purchased gas pipeline currently owned and operated by the Company in Pennsylvania to be reported to the Commission, pursuant to Act 127, was unreasonably delayed, and which I&E asserts resulted in reporting errors to the Commission on the 2011 and 2012 Pennsylvania Pipeline Operator Annual Registration Forms.

20. Upon Commission approval of the Settlement in its entirety without modification, I&E will not file any further complaints or initiate other action against the Company at the Commission or elsewhere with respect to the Company's gas pipeline reporting obligations to the Commission under Act 127 for calendar years 2011, 2012 and 2013. Nor will I&E initiate any action that would cause the Commission or a third party to file any further complaints or take other action against the Company at the Commission or elsewhere with respect to the Company's gas pipeline reporting obligations to the Commission under Act 127 for calendar years 2011, 2012 and 2013. The foregoing provision shall not prevent I&E from cooperating, as required, with the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration with respect to any and all matters addressed in I&E's Complaint filed at PaPUC Docket No. C-2014-2444722.

21. This Settlement is made without admission against or prejudice to any factual or legal position which either the Company or I&E has asserted previously in connection with the Complaint or otherwise, including any wrongdoing or violation of law with respect to the reporting of gas pipeline miles to the Commission under Act 127 for calendar years 2011, 2012 and 2013.

22. The Company has improved and commits to continuing to improve the

timeliness and completeness of its communications with the Commission's Gas Safety Division staff in connection with staff's field investigations, audits and reviews of the Pennsylvania Pipeline Operator Annual Registration Forms under Act 127.

23. The Company will explain and provide relevant documents in each year's annual Act 127 reports, and any amendments of those reports submitted to the Commission, for all changes in reported gas pipeline miles, classifications and/or exemptions from its prior year's Act 127 Pennsylvania Pipeline Operator Annual Registration Form filing.

24. To the extent the Company over-reported to the Commission the amount and type of Pennsylvania jurisdictional gas pipelines for calendar years 2011-2013, it will not at any time seek from the Commission any refunds, interest, etc. for amounts that may have been overpaid.

B. General Settlement Provisions

25. This Settlement shall be deemed to constitute full and complete satisfaction by the Company of all obligations relating to the issues raised, within the scope of or related to the Complaint. The Joint Petitioners acknowledge and agree that this Settlement shall have the same force and effect as if this proceeding were fully litigated.

26. This Settlement reflects significant compromises between the Joint Petitioners and: (a) is proposed solely for the purpose of settling the present proceeding; (b) is made without any admission by any party hereto as to any matter of fact or law, other than as may be expressly stated in this Joint Petition; and (c) is without prejudice to any position advanced by either Joint Petitioner in these proceedings or that might be adopted by any Joint Petitioner during subsequent litigation. Notwithstanding the foregoing, however, if this Settlement is approved and implemented, the Joint Petitioners shall not in any subsequent proceeding take any action or

advocate any position which would disrupt the spirit or meaning of the Joint Petition or the Settlement.

27. The Parties acknowledge that their actions pursuant to this Joint Petition are undertaken to resolve a disputed claim and are on an entirely voluntary basis, and this Joint Petition and Settlement are made without admission against or prejudice to any factual or legal position which either Joint Petitioner has asserted previously in connection with the Complaint or otherwise. Neither Joint Petitioner may rely on this Joint Petition as an admission, or, by way of estoppel, in any proceeding or future negotiation between them, other than a proceeding to enforce this Joint Petition or any final order from the Commission approving the Joint Petition.

28. This Joint Petition and the Settlement are conditioned upon the Commission's approval of all of the terms outlined herein. If the Commission modifies terms, adds additional terms or fails to approve any of the Settlement terms, then either Joint Petitioner may elect to withdraw from the Settlement and proceed to complete the litigation of these proceedings, in which event: (a) the Joint Petitioners reserve their respective rights to, among other things, request rulings on all preliminary motions that may have been filed previously, participate in a prehearing conference, conduct discovery, file testimony, confront opposing witnesses and generally participate in evidentiary hearings, submit briefs and reply briefs supporting their respective positions, etc.; (b) the Joint Petitioners claim the privilege reserved in 52 Pa. Code § 5.231 that no part of the unaccepted Settlement shall be admissible in evidence at any time against any Joint Petitioner; and (c) no adverse inference shall be drawn against either Joint Petitioner as a result of any matter set forth herein. Such election to withdraw from the Settlement must be made in writing, filed with the Secretary of the Commission and served upon

all parties within twenty (20) days after entry of an Order modifying or failing to approve the Settlement.

29. As of the date the Commission approves this Joint Petition and Settlement in a final order not subject to appeal or further challenge (“Effective Date”), I&E hereby holds harmless, releases and forever forbears from further prosecuting any formal complaint relating to the Company’s conduct that is the subject of the Formal Complaint filed previously in this proceeding and as described in this Joint Petition up to the Effective Date. Under no circumstances shall I&E request any further civil or other penalties for any Company conduct or actions described in the Formal Complaint and this Joint Petition.

30. The Joint Petitioners shall not, in any subsequent proceeding before the Commission or any other forum, take any action, file any pleadings, or otherwise advocate any position inconsistent with or otherwise challenge or seek to overturn the terms and conditions of this Joint Petition and Settlement.

31. The terms and conditions of this Joint Petition shall be implemented at all times by the Company and I&E in good faith and fair dealing. Each Joint Petitioner shall execute such other documents as may be reasonably requested by the other Joint Petitioner to implement the intent and purpose of this Joint Petition and Settlement.

32. The Joint Petitioners may enforce this Joint Petition and Settlement through any appropriate action before the Commission or through any other available remedy in law, equity or otherwise.

33. This Joint Petition constitutes the entire agreement between the Company and I&E hereto with respect to the matters contained herein and all prior agreements with respect to the matters covered herein are superseded, and each Joint Petitioner confirms that it is not relying

upon any representations or warranties of the other Joint Petitioner, except as specifically set forth herein or incorporated by reference hereto.

34. This Joint Petition shall be governed by and construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, irrespective of the application of any conflict of laws provisions.

35. The Joint Petitioners agree that this Settlement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together constitute one and the same agreement that is binding upon the Joint Petitioners as if they executed a single petition.

36. It is expressly understood and agreed between the Joint Petitioners that this Joint Petition and Settlement constitutes a negotiated resolution solely of the above-captioned proceeding.

37. The Joint Petitioners shall utilize their best efforts to support in good faith this Joint Petition and Settlement and to secure its prompt approval by the Commission.

IV. PUBLIC INTEREST CONSIDERATIONS

38. The Joint Petitioners submit that this Settlement is in the public interest and should be approved in full for the following reasons:

(a) Substantial litigation and associated costs will be avoided by this Settlement. This Settlement resolves a number of important and contentious issues fairly, by balancing the interests of the Company, I&E, and the public. If approved, the Settlement will eliminate the possibility of further Commission litigation and appeals, along with their attendant costs; and

(b) This Settlement is consistent with the Commission's policies promoting negotiated settlements. The Joint Petitioners arrived at this Settlement after a number of meetings, discussions, and extensive negotiations. The Settlement terms and conditions constitute a carefully crafted package representing reasonable negotiated compromises on the issues addressed herein. Thus, the Settlement is consistent with the Commission's rules and practices encouraging negotiated settlements (*See* 52 Pa. Code §§ 5.231, 69.391, and 69.1201).

(c) The reasons set forth in the Statements in Support filed by the Joint Petitioners at the above-captioned docket support approval of this Settlement.

V. CONCLUSION

WHEREFORE, the Joint Petitioners, intending to be legally bound, respectfully request that the Commission:

- (a) approve the Settlement set forth herein in its entirety without modification;
- and
- (b) terminate this proceeding and mark the matter closed.

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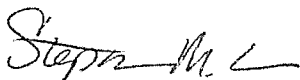
IN WITNESS WHEREOF, the Joint Petitioners bind themselves to the terms and conditions set forth herein, as evidenced by the signature of their attorneys, each of whom has authority to execute this Joint Petition.

XTO ENERGY, INC. and MOUNTAIN GATHERING, LLC



By: Alan Michael Seltzer
John F. Povilaitis
BUCHANAN INGERSOLL & ROONEY PC
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357

BUREAU OF INVESTIGATION AND ENFORCEMENT



By: Stephanie M. Wimer
Heidi L. Wushinske
Kourtney L. Myers
Prosecutors
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

Dated: May 18, 2015

Attachment A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility	:	
Commission, Bureau of	:	
Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2014-2444722
	:	
XTO Energy Inc. and Mountain	:	
Gathering, LLC,	:	
Respondent	:	

**BUREAU OF INVESTIGATION AND ENFORCEMENT
STATEMENT IN SUPPORT OF
JOINT PETITION OF FULL SETTLEMENT OF PROCEEDING**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

I. INTRODUCTION

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission” or “PaPUC”) hereby files this Statement in Support of the Joint Petition of Full Settlement of Proceeding (“Settlement” or “Settlement Agreement”) entered into by I&E and XTO Energy, Inc. (“XTO”) and Mountain Gathering, LLC (“Mountain Gathering”) (together, the “Company”) (collectively, the “Parties”) in the above-captioned proceeding. The Settlement, if approved, fully resolves all issues related to the I&E Complaint proceeding involving allegations that the Company failed to timely identify and classify pipeline for reporting purposes pursuant to the Gas and Hazardous Liquids Pipelines Act, 58 P.S. §§ 801.101 *et seq.* (“Act 127”).

I&E respectfully submits that the Settlement is in the public interest and requests that the Commission approve the Settlement, including the terms and conditions thereof, without modification.

II. BACKGROUND

This matter involves XTO and Mountain Gathering, which are “pipeline operators” as that term is defined in Act 127. XTO and Mountain Gathering “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.” 58 P.S. § 801.102.

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. 58 P.S. § 801.503(d). I&E submits that the Gas Safety Division relies on pipeline operators to completely and accurately report jurisdictional pipeline miles so that the Gas Safety Division may inspect those facilities.

Prior to the time that Act 127 became effective on February 20, 2012, I&E asserts that XTO acquired assets from other companies. In July of 2008, XTO acquired approximately 900 miles of pipeline in Pennsylvania and West Virginia from Linn Energy, LLC (“Linn”). In June of 2011, XTO acquired pipeline from Phillips Resources, Inc. (Phillips Production Co.) and TWP, Inc. (T. W. Phillips Supply Corp.) (collectively, “Phillips”). Shortly after the acquisition of Linn pipeline in 2008, XTO established

Mountain Gathering, which inherited pipelines formerly operated by Linn. Mountain Gathering also constructed new gathering lines.

After Act 127 became effective, XTO and Mountain Gathering reported zero regulated pipeline miles with the Commission on their respective 2011 Pennsylvania Pipeline Operator Annual Registration Forms. XTO also reported zero regulated pipeline miles on its 2012 Pennsylvania Pipeline Operator Annual Registration Form. Mountain Gathering reported 14 miles of regulated pipeline on its 2012 Pennsylvania Pipeline Operator Annual Registration Form regarding what I&E believes to be its newly constructed pipeline.

On June 3, 2013, Paul J. Metro, Manager of the Gas Safety Division, and Christopher E. Demarco, Gas Safety Supervisor, met with XTO and Mountain Gathering in Warrendale, Pennsylvania. As a result of the meeting, I&E asserts that the Gas Safety Division determined that XTO and Mountain Gathering had not completed class location studies¹ for pipeline acquired by Linn and Phillips several years earlier.

By letter dated August 22, 2013 to XTO 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.

In addition, on August 26, 2013, Gas Safety Inspector Andrew Geibel conducted

¹ Pursuant to the Federal Pipeline Safety Regulations at 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.

an inspection of XTO's and Mountain Gathering's pipeline facilities and records for facilities located in Indiana County, Pennsylvania. Class location studies of facilities acquired from Linn or Phillips that are located in Indiana County were reviewed. I&E asserts that the Gas Safety Division concluded that at the time of the inspection, 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 or Mountain Gathering were in operation during the 2011 and 2012 calendar years and were not previously reported as being jurisdictional.

I&E further avers that in September of 2013, XTO 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 completed Pennsylvania's annual registration forms without first identifying all possible jurisdictional pipelines.

On September 26, 2014, I&E filed a Formal Complaint ("Complaint") with the Commission alleging that XTO and Mountain Gathering failed to properly report and pay the related assessments to the Commission in connection with at least 5.3 miles of regulated class 3 onshore gathering pipelines and 0.9 miles of regulated class 2 onshore gathering pipelines in operation in Indiana County, Pennsylvania on the Company's 2011 and 2012 annual registration forms as required by Act 127.² I&E also alleges that the Company failed to determine whether certain pipeline facilities acquired from previous

² In the Complaint, I&E asserts that this action violates 58 P.S. § 801.503(d).

owners were regulated onshore gathering lines for Act 127 reporting purposes³ and that the Company neglected to follow its procedures regarding pipeline class location studies for certain acquired facilities.⁴

Regarding relief, I&E requested in the Complaint that the Commission: (a) impose a civil penalty of \$100,000 against the Company pursuant to Section 3301 of the Code, 66 Pa.C.S. § 3301, and pay an assessment of \$6,994 for the alleged under-reporting of onshore gas gathering pipeline miles in accordance with Act 127 for the 2012-13 and 2013-14 fiscal years; and (b) order the Company to determine whether its onshore Pennsylvania pipelines are regulated gathering lines pursuant to Section 192.8 of the Federal Pipeline Safety Regulations, 49 C.F.R. § 192.8.

On November 14, 2014, the Company filed an Answer and New Matter denying the material allegations in I&E's Complaint. Specifically, the Company argues that it owns and operates hundreds of miles of gas pipeline in Pennsylvania and the only ones implicated in I&E's Complaint are relatively few miles of pipeline acquired from previous owners. Moreover, the Company asserts that it treated the acquired pipelines as production facilities, which are non-jurisdictional to the Commission under Act 127, and such treatment was consistent with how previous owners classified the pipeline and

³ In the Complaint, I&E asserts that this action violates 49 C.F.R. § 192.8 and 52 Pa. Code § 59.33. Had this matter been litigated, I&E would have amended its Complaint to reflect that the Company violated 58 P.S. § 801.302 in lieu of 52 Pa. Code § 59.33. Both provisions adopt the Federal Pipeline Safety Laws, but the former applies to non-public utility pipeline operators.

⁴ In the Complaint, I&E asserts that this action violates 49 C.F.R. § 192.613 and 52 Pa. Code § 59.33. Had this matter been litigated, I&E would have amended its Complaint to reflect that the Company violated 58 P.S. § 801.302 in lieu of 52 Pa. Code § 59.33. Both provisions adopt the Federal Pipeline Safety Laws, but the former applies to non-public utility pipeline operators.

standard industry practice. In addition, the Company avers that it was fully engaged in classifying the acquired pipeline consistent with federal standards set forth in 49 C.F.R. § 192.8, but that process is complex and was hampered by poor data quality, among other things. Further, based upon the completed pipeline classification studies, XTO and Mountain Gathering aver that they over-reported pipeline mileage to the Commission under Act 127 and did not under-report mileage, as alleged. Namely, XTO and Mountain Gathering deny that the facilities located in Indiana County that were identified by the Gas Safety Division as being jurisdictional are regulated pipeline miles and state that evaluation and analysis of the pipeline in question definitively determined that it qualified for a “Class B” exception under the American Petroleum Institute’s “Recommended Practice 80” (“RP-80”) and was not required to be reported to the Commission under Act 127.

III. THE PUBLIC INTEREST

Pursuant to the Commission’s policy of encouraging settlements that are reasonable and in the public interest, the Parties held a series of settlement discussions. These discussions culminated in this Settlement Agreement, which, once approved, will resolve all issues related to I&E’s Complaint proceeding involving allegations that the Company failed to timely identify and classify pipeline for reporting purposes pursuant to Act 127.

Notably, subsequent to the filing of I&E’s Complaint, the Company completed class location studies on all pipeline acquired from previous owners. Therefore, the Gas Safety Division is able to locate and inspect all of the Company’s jurisdictional facilities,

which I&E insists is essential for public safety. In addition, the Settlement, and in particular, the civil penalty, serves to address I&E's concerns that the process XTO and Mountain Gathering took to complete a comprehensive evaluation and classification of acquired gas pipeline currently owned and operated by the Company in Pennsylvania was unreasonably delayed.

I&E intended to prove the factual allegations set forth in its Complaint, which the Company has disputed, at hearing. This Settlement Agreement results from the compromises of the Parties. Further, I&E recognizes that, given the inherent unpredictability of the outcome of a contested proceeding, the benefits to amicably resolving the disputed issues through settlement outweigh the risks and expenditures of continued litigation. I&E submits that the Settlement constitutes a reasonable compromise of the issues presented and is in the public interest. As such, I&E respectfully requests that the Commission approve the Settlement without modification.

IV. TERMS OF SETTLEMENT:

Under the terms of the Settlement, I&E and the Company have agreed as follows:

1. *Class Location Studies* – the Company agreed to fully complete, and fully completed, class location studies on or before March 31, 2015, on all pipeline owned and operated by the Company that is to be reported to the Commission pursuant to Act 127, and identified any and all jurisdictional pipeline miles on the Company's 2014 Pennsylvania Pipeline Operator Annual Registration Forms.

2. *Civil Penalty* - The Company shall pay a civil penalty in the amount of Thirty Thousand Dollars (\$30,000), pursuant to 66 Pa.C.S. § 3301. Said payment shall

be made by wire transfer directly to the Commonwealth of Pennsylvania (utilizing wire transfer instructions provided by I&E to the Company) within forty (40) days of the date of entry of a final and non-appealed Opinion and Order of the PaPUC, not the subject of a petition for reconsideration, approving the Settlement in its entirety without modification or amendment.

3. I&E acknowledges that the Company has been forthcoming with information and has cooperated with I&E and the PaPUC's Gas Safety Division since the filing of the Complaint.

4. The Settlement resolves all issues regarding the Company's gas pipeline reporting obligations to the PaPUC under Act 127 for calendar years 2011, 2012 and 2013 including, without limitation, the claims made and reasonably related to those contained in the I&E Complaint filed at PaPUC Docket No. C-2014-2444722.

5. This Settlement, including, without limitation, the civil penalty, fully resolves I&E's allegations that the process the Company took to complete a comprehensive evaluation and classification of purchased gas pipeline currently owned and operated by the Company in Pennsylvania to be reported to the Commission, pursuant to Act 127, was unreasonably delayed, and which I&E asserts resulted in reporting errors to the Commission on the 2011 and 2012 Pennsylvania Pipeline Operator Annual Registration Forms.

6. Upon Commission approval of the Settlement in its entirety without modification, I&E will not file any further complaints or initiate other action against the Company at the Commission or elsewhere with respect to the Company's gas pipeline

reporting obligations to the Commission under Act 127 for calendar years 2011, 2012 and 2013. Nor will I&E initiate any action that would cause the Commission or a third party to file any further complaints or take other action against the Company at the Commission or elsewhere with respect to the Company's gas pipeline reporting obligations to the Commission under Act 127 for calendar years 2011, 2012 and 2013. The foregoing provision shall not prevent I&E from cooperating, as required, with the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration with respect to any and all matters addressed in I&E's Complaint filed at PaPUC Docket No. C-2014-2444722.

7. This Settlement is made without admission against or prejudice to any factual or legal position which either the Company or I&E has asserted previously in connection with the Complaint or otherwise, including any wrongdoing or violation of law with respect to the reporting of gas pipeline miles to the Commission under Act 127 for calendar years 2011, 2012 and 2013.

8. The Company has improved and commits to continuing to improve the timeliness and completeness of its communications with the Commission's Gas Safety Division staff in connection with staff's field investigations, audits and reviews of the Pennsylvania Pipeline Operator Annual Registration Forms under Act 127.

9. The Company will explain and provide relevant documents in each year's annual Act 127 reports, and any amendments of those reports submitted to the Commission, for all changes in reported gas pipeline miles, classifications and/or

exemptions from its prior year's Act 127 Pennsylvania Pipeline Operator Annual Registration Form filing.

10. To the extent the Company over-reported to the Commission the amount and type of Pennsylvania jurisdictional gas pipelines for calendar years 2011-2013, it will not at any time seek from the Commission any refunds, interest, etc. for amounts that may have been overpaid.

V. ANALYSIS OF THE ROSI STANDARDS:

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

I&E submits that approval of the Settlement Agreement in the above-captioned matter is consistent with the Commission's Policy Statement for Litigated and Settled Proceedings Involving Violations of the Code and Commission Regulations ("Policy Statement"), 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409 (Order entered March 16, 2000). The Commission's Policy Statement sets forth ten factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or

statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

The first factor considers whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation, or if the conduct was less egregious, such as an administrative or technical error. Conduct of a more serious nature may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(1). I&E submits that the violations averred in the Complaint are serious in nature in that XTO and Mountain Gathering did not completely evaluate and classify pipelines owned and operated by the Company prior to filing Pennsylvania Pipeline Operator Annual Registration Forms. The Gas Safety Division depends on the accurate completion of Act 127 forms so that the Gas Safety Division may locate and inspect all jurisdictional facilities to ensure compliance with the Federal Pipeline Safety Regulations. Therefore, significant public safety concerns are present when pipeline is not timely and properly classified and reported to the Commission pursuant to Act 127. I&E submits that the Company's alleged conduct is of a serious nature and was considered in arriving at the civil penalty in the Settlement Agreement.

The second factor considered is whether the resulting consequences of the Company's alleged conduct were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(2). No serious consequences, such as personal injury or property damage, are alleged to have occurred.

The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). “This factor may only be considered in evaluating litigated cases.” *Id.* Whether the Company’s alleged conduct was intentional or negligent does not apply since this matter is being resolved by settlement of the Parties.

The fourth factor to be considered is whether the Company has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). XTO and Mountain Gathering fully completed class location studies on all of its pipeline facilities in Pennsylvania prior to March 31, 2015 – the deadline for filing the 2014 Pennsylvania Pipeline Operator Annual Registration Form. Therefore, the conduct alleged in I&E’s Complaint has been addressed. Further, the Company has agreed to improve the timeliness and completeness of its communications with the Gas Safety Division. The Company has also agreed to provide documents in each year’s annual Act 127 report to explain changes in reported gas pipeline miles, classifications and/or exemptions from its prior year’s report.

The fifth factor to be considered relates to the number of customers affected by the Company's actions and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). No customer is known to have been affected by the Company’s actions. Regarding the duration of the violation, I&E submits that the class location studies of pipeline currently owned and operated by the Company in Pennsylvania, but acquired from previous owners, were not fully completed until at least 2014.

The sixth factor to be considered relates to the compliance history of the Company. 52 Pa. Code § 69.1201(c)(6). “An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.” *Id.* The instant matter is the first alleged infraction on either XTO’s or Mountain Gathering’s compliance history.

The seventh factor to be considered relates to whether the Company cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). XTO and Mountain Gathering have been forthcoming with information and have cooperated with I&E and the Gas Safety Division since the filing of the Complaint in this proceeding.

The eighth factor to be considered is the appropriate settlement amount necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). I&E submits that a civil penalty amount of \$30,000, which may not be claimed as a tax deduction by operation of law, is substantial and sufficient to deter XTO and Mountain Gathering from committing future violations.

The ninth factor to be considered relates to past Commission decisions in similar matters. 52 Pa. Code § 69.1201(c)(9). I&E submits that the scope of the conduct complained of in this proceeding is unique and unlike other complaint proceedings that the Commission has decided since it involves pipeline operators, which are entities that recently became subject to the Commission’s regulatory oversight for gas safety purposes. There are no past Commission decisions responsive to a similar situation, and for that reason, this case should be viewed on its own merits. However, in looking at the relevant factors that are comparable to other incidents, such as the allegations at issue

here - namely, an alleged failure to timely classify pipeline for reporting purposes resulting in alleged reporting errors - and comparing the allegations to the relief provided in the Settlement - specifically, a civil penalty - this Settlement is consistent with past Commission actions and presents a fair and reasonable outcome.

The tenth factor considers “other relevant factors.” 52 Pa. Code § 69.1201(c)(10). I&E submits that an additional relevant factor – whether the case was settled or litigated – is of pivotal importance to this Settlement Agreement. A settlement avoids the necessity for the governmental agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a lesser fine or penalty, or other remedial action. Both parties negotiate from their initial litigation positions. The fines and penalties, and other remedial actions resulting from a fully litigated proceeding are difficult to predict and can differ from those that result from a settlement. Reasonable settlement terms can represent economic and programmatic compromise but allow the parties to move forward and to focus on implementing the agreed upon remedial actions.

In conclusion, I&E fully supports the terms and conditions of the Settlement Agreement. The terms of the Settlement Agreement reflect a carefully balanced compromise of the interests of the Parties in this proceeding. The Parties believe that approval of this Settlement Agreement is in the public interest. Acceptance of this Settlement Agreement avoids the necessity of further administrative and potential appellate proceedings at what would have been a substantial cost to the Parties.

WHEREFORE, I&E supports the Settlement Agreement and respectfully requests that the Commission approve the Settlement in its entirety, without modification.

Respectfully submitted,



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Dated: May 18, 2015

Attachment B

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2014-2444722
	:	
XTO Energy, Inc. and Mountain Gathering,	:	
LLC,	:	
	:	
Respondent	:	

**STATEMENT OF XTO ENERGY, INC. AND MOUNTAIN GATHERING, LLC IN
SUPPORT FOR FULL SETTLEMENT OF
PROCEEDING**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

XTO Energy, Inc. (“XTO”) and Mountain Gathering, LLC. (“Mountain”) (XTO and Mountain, collectively “Company”) hereby file with the Pennsylvania Public Utility Commission (“Commission”) this Statement in Support of the Joint Petition for Full Settlement of Proceeding (“Joint Petition” or “Settlement”) entered into by the Company and the Commission’s Bureau of Investigation and Enforcement (“I&E”) (I&E and the Company, collectively, “Joint Petitioners”) in the above-captioned proceeding. The Company believes the Settlement balances the duty of the Commission to protect the public interest with reasonable cost-effective safety requirements within its jurisdiction and the obligations of the Company by resolving all of the issues enumerated in the Formal Complaint filed by I&E in this proceeding (“Complaint”) while avoiding the delay in a final result and expense of unnecessary litigation including, but not limited to, formal discovery, witness testimony, hearings, briefs, exceptions and appeals. The Settlement is in the public interest and supportive of both the Company’s and

I&E's objectives in this proceeding. The Settlement is fair, just and reasonable, meets all legal requirements, and should therefore be approved without modification.

I. BACKGROUND

1. The background of this proceeding is set forth in Paragraphs 1-11 of the Joint Petition and is incorporated by reference herein. However, for context selected portions of the background are set forth below.

2. On September 26, 2014, I&E filed the Complaint with the Commission against the Company. The Complaint alleges, among other things, that the Company failed to properly report and pay the related assessments to the Commission in connection with at least 5.3 miles of regulated class 3 onshore gathering pipelines and 0.9 miles of regulated class 2 onshore gathering pipelines in operation in Indiana County, Pennsylvania on the Company's 2011 and 2012 annual registration forms as required by the Gas and Hazardous Liquids Pipelines Act, 58 P.S. § 801.101 *et seq.* ("Act 127"). The Complaint also alleges that the Company failed to determine whether certain pipelines acquired from previous owners were regulated onshore gathering lines for Act 127 reporting purposes and that the Company neglected to timely follow the Commission staff's directions regarding the completion of pipeline class location studies.

3. In response to I&E's allegations that the Company failed to comply with provisions of Act 127 and Federal Pipeline Safety regulations, on November 14, 2014, the Company filed an Answer and New Matter to the Complaint denying the material allegations therein and representing, among other things, that:

- The Company owns and operates hundreds of miles of gas pipelines in Pennsylvania and the only ones implicated by the Complaint are those miles of pipeline acquired or transferred by merger from third parties and not those pipelines that were constructed and developed by the Company;

- The Company, consistent with how their previous owners had classified them and standard industry practice, treated the gas pipelines acquired or transferred by merger from third parties as *production* facilities that were non-jurisdictional to the Commission under Act 127;
- The nature and quality of the data provided or made available to the Company with respect to the third party pipelines at issue in the Complaint was limited, incomplete and of poor quality;
- The Company continually acted to review, evaluate and scrub the pipeline data but the classification process was hampered by poor data quality, forested field conditions, limited availability of geographic information system (“GIS”) data and conflicting presentation from field personnel regarding the location and other physical and operating characteristics of the third party acquired pipelines;
- When Act 127 became effective, the Commission’s Gas Safety Division personnel asked that portions of the third party acquired gas pipelines be treated as “gathering,” consistent with Federal Pipeline Safety Regulations, and that the Company provide pipeline classifications for such assets, notwithstanding their prior classification as non-jurisdictional “production” facilities;
- The Company has been fully engaged in classifying the third party acquired pipeline assets consistent with federal standards (i.e., RP-80), but that process is complex and time-consuming, especially when the underlying pipeline data is inaccurate, non-existent or both, and accurate data could not be obtained quickly.
- There are no allegations in the Complaint related to any pipeline facilities constructed by the Company, only those acquired by the Company from third parties.

4. As referenced in Paragraph 13 of the Joint Petition, the Company was prepared to defend in litigation each of the allegations raised in the Complaint generally and outlined specifically in Paragraph 13 of the Joint Petition. It was specifically prepared to present a case refuting all claims that the Company had committed any act or omission in violation of Act 127 or Federal Pipeline regulations for, among other things, the reasons and bases specified in paragraph 3 above.

5. The Company maintains that its conduct giving rise to this proceeding was at all times lawful, appropriate and in compliance with the Act 127 and Federal Pipeline regulations. Notwithstanding, the Company acknowledges that the issues raised in this matter are subject to both factual and legal dispute, and that its operations relating to the classification and reporting of natural gas pipelines acquired from third parties are subject to continued enhancement. In an effort to realize and achieve various public interest benefits and to avoid the time, expense and uncertainty of litigation, the Company and I&E have agreed to the specific terms of the Settlement specified in Paragraphs 15 through 37 of the Joint Petition and incorporated by reference herein.

II. PUBLIC INTEREST ANALYSIS

6. It is well-established that Commission policy promotes settlements.¹ The public benefits from settlements in that they reduce the time and expense the parties must expend in litigating a case while simultaneously conserving important administrative resources. Also, settlement results are preferable because they are more predictable than those achieved in full litigation. In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest.²

7. The Commission established standards to be applied in determining whether a particular enforcement outcome is in the public interest in *Rosi v. Bell Atlantic Pennsylvania Inc., et al.*, 94 Pa.P.U.C. 103 (Order entered March 16, 2000), which standards were specifically enumerated in *Pennsylvania Public Utility Commission v. NCIC Operator Services*, M-00001440 (Tentative Order entered December 20, 2000). These standards have been reviewed by the Company and compared against the proposed outcome in this case.

¹ See 52 Pa. Code § 5.231.

² *Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.*, Docket No. C-2010-2071433, 2012 Pa. PUC LEXIS 1377 at *6 (August 31, 2012).

8. The Company submits that this Settlement meets the standards outlined by *Rosi* as being in the public interest. Approval of the Settlement is consistent with the Policy Statement promulgated by the Commission establishing the ten *Rosi* factors it may consider in evaluating whether a civil penalty for violating a Commission order, regulation or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest.³ The Policy Statement, by its own language, is only considered a “guide” to the Commission in evaluating these types of matters. Moreover, the Commission has recognized that “the parties in settled cases should be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest.”⁴ The factors and standards used by the Commission under the Policy Statement are as follows:

- (1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.
- (2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.
- (3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.
- (4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.
- (5) The number of customers affected and the duration of the violation.

³ See 52 Pa. Code § 69.1201.

⁴ *Pennsylvania Public Utility Commission Law Bureau Prosecutory Staff v. UGI Utilities, Inc.*, 2009 Pa. PUC LEXIS 1867, M-2009-2031571(September 10, 2009).

- (6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.
- (7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.
- (8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.
- (9) Past Commission decisions in similar situations.
- (10) Other relevant factors.⁵

The substantial public benefits of the Settlement, as well as the ten factors the Commission evaluates in reviewing a settlement of an alleged violation, are addressed in paragraphs 9 through 19, *infra*.

9. The first factor to be considered when reviewing the Settlement is whether the conduct at issue was of a serious nature. The Complaint alleges that the Company failed to timely report gas pipeline miles under Act 127 and to have in place a procedure to effectively and timely evaluate and classify gas pipelines acquired from third parties. The Company fully acknowledges that the purpose of gas pipeline reporting is to allow, among other things, Commission pipeline safety staff to evaluate jurisdictional pipelines for safety purposes. In this case, however, the pipelines in question were historically treated as "production" lines that were non-jurisdictional to the Commission and comprised of low pressure and small diameter pipes.

Aside from the Company's dispute of the Complaint's alleged violations, it is undeniable that there has been no damage or harm to persons or property associated the Company's alleged conduct. Indeed, as noted in the Company's Answer and New Matter, subsequent and continuing evaluation and classification of the pipelines at issue reveals that, if anything, the Company

⁵See 52 Pa. Code § 69.1201(c).

“over-reported” pipeline miles to the Commission under Act 127 as opposed to under-reporting such data as alleged in the Complaint. It is clear that the conduct at issue and under dispute cannot reasonably be characterized as “serious”. Importantly, and as noted in the Settlement, the Company has already completed the pipeline classification process with respect to the pipelines at issue, and improved communications with the Commission’s pipeline safety staff in a manner that would likely substantially reduce if not entirely eliminate the type of conduct alleged in the Complaint from recurring.

10. The second factor to be considered is whether the resulting consequences of the Company’s conduct were of a “serious nature.” As noted above in Paragraph 9, there were no consequences to the alleged conduct at issue in the Formal Complaint. There was no harm to persons or property and all underlying pipeline evaluations/classifications of the subject pipeline have been completed.

11. The third factor is whether the Company’s conduct was intentional or negligent. Since this is a settled and non-litigated matter, this standard is inapplicable by its own terms. There has been no finding in any Commission proceeding that the Company’s conduct in reporting the third party acquired gas pipeline miles was either intentional or negligent in nature.

12. The fourth factor to be considered is whether the Company made efforts to modify internal policies and procedures to address the alleged conduct at issue and to prevent similar conduct in the future. As noted above and in the Settlement, the Company has completed the evaluation and classification of the subject acquired pipelines and improved overall communications with the Commission’s pipeline safety staff. The very process leading to negotiating the Settlement has underscored for the Company the importance of effective communication with the Commission pipeline safety staff to minimize any future

misunderstandings about what is expected by Commission staff and what the Company is doing in response to staff's inquiries about the Company's Pennsylvania jurisdictional pipeline facilities. It is unlikely, in the Company's view, that the unique circumstances giving rise to the Complaint, including the unintended clash between the reporting requirements of the then-new Act 127 and the historic treatment of the subject assets as non-Commission jurisdictional "production", is likely to be repeated.

13. The fifth factor to be considered is the number of customers affected and the duration of the violation. No customers were affected by the alleged conduct/violation in this proceeding. While the Company and I&E dispute the duration of the alleged "under-reporting" of pipelines, the Company's detailed Answer and New Matter documented the substantial and timely efforts the Company conducted to evaluate and classify the historically considered non-Commission jurisdictional production pipelines acquired from third parties in the absence of reliable data about most aspects of these facilities. Indeed, when new safety standards are issued and applied to existing pipeline facilities, federal regulations have frequently allowed for a reasonable period for compliance. Since no customers were affected by the alleged and disputed conduct, the application of this standard on its own suggests little or no regulatory sanction against the Company.

14. The sixth factor is the Company's compliance history. The Company has no history of non-compliance with Act 127 or the Commission generally. The Company is a responsible corporate citizen that proactively works with regulators in all jurisdictions it operates. The challenges presented in this proceeding, resulting from "acquired" gas pipelines, are highly unusual. The Company fastidiously records, tracks and maintains the relevant Act 127 pipeline data for those facilities it constructs. As noted in its Answer and New Matter, the fact

that the gas production facilities at issue were *purchased from third parties* created classification and evaluation issues that are not normally extant with *Company-constructed* facilities. No issues such as those alleged in the Complaint have occurred previously in connection with the Company's implementation of Act 127.

15. The seventh factor to be considered is whether the regulated entity cooperated with the Commission's investigation. Not only did the Company fully support and cooperate with I&E staff throughout its investigation, as well as the Complaint and settlement process, Paragraph 17 of the Settlement expressly acknowledges the Company's cooperation.

16. The eighth factor is whether the amount of the civil penalty or fine will deter future violations. Given the substantial dispute between the Company and I&E about the existence of any violation of Act 127 or any Federal Pipeline Safety regulations, the \$30,000 agreed upon civil penalty is quite reasonable. From the Company's perspective, there are no future violations to deter. Nevertheless, and as noted above, the Company has agreed to the aforesaid civil penalty in order to terminate this proceeding, thereby saving the time and resources of the Commission and other stakeholders in litigating a matter whose outcome is far from certain. From the Company's perspective, neither the payment of the aforesaid civil penalty nor entering into the Settlement constitutes an admission of any unlawful conduct or violations by the Company. See paragraph 21 of the Settlement which provides as follows:

This Settlement is made without admission against or prejudice to any factual or legal position which either the Company or I&E has asserted previously in connection with the Complaint or otherwise, including any wrongdoing or violation of law with respect to the reporting of gas pipeline miles to the Commission under Act 127 for calendar years 2011, 2012 and 2013.

17. The ninth factor looks at past Commission decisions in similar situations. To the best of the Company's knowledge, the Commission has never dealt previously with an issue relating to alleged under-reporting of gas pipeline miles under Act 127. However, when all relevant factors are considered, the Settlement is not inconsistent with past Commission actions. Moreover, because this case has been settled and not litigated, it should be considered on its own unique merits and circumstances.

18. The tenth factor is a catch-all for other relevant factors. In this regard, the Company notes that the Settlement obviates the need for I&E as the prosecuting agency to prove elements of each allegation. The Settlement eliminates any risk to I&E of not being able to meet its burden of persuasion on matters pertinent to the Complaint if this case were to proceed to litigation. In exchange for this minimized risk and the Company's good faith effort to improve communications with Commission pipeline safety staff, the Company has agreed to pay a \$30,000 civil penalty. Fines, penalties and other remedial actions resulting from a fully litigated case are difficult to predict and can differ substantially from a settlement. On the other hand, the reasonable Settlement terms agreed to in this case will allow the Company and I&E to refocus their energy from *proving* their cases to *implementing* the Settlement with the goal of avoiding the unusual circumstances that led to filing the Complaint in the first instance.

19. Based on the above analysis, the Settlement is consistent with the Commission's ten-factor Policy Statement and is designed to provide a thorough and appropriate response to the issues that have been raised by this proceeding. The Company has endeavored to work with I&E to prepare a settlement package that represents a thoughtful and thorough response to the Complaint. In addition, the Settlement will eliminate the possibility of further Commission

litigation and appeals, along with their attendant costs. These public benefits come at some economic cost to the Company.

III. CONCLUSION

The Company and I&E have worked diligently and cooperatively to craft a fair, balanced and comprehensive settlement of the issues raised by the Complaint. The Settlement resolves all issues related to the Complaint and provides significant public benefits. The Settlement terms and conditions should be expressly found to satisfy the ten factors in the Commission's Policy Statement at 52 Pa. Code § 69.1201(c). The Company fully supports the Settlement and respectfully requests that the Commission approve it in its entirety without modification.

Respectfully submitted,

Dated: May 18, 2015



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Gathering, LLC.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY	:	
COMMISSION, BUREAU OF	:	
INVESTIGATION AND ENFORCEMENT	:	
v.	:	Docket No. C-2014-2444722
	:	
XTO ENERGY INC AND	:	
MOUNTAIN GATHERING LLC	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the Joint Petition for Full Settlement of Proceeding, upon the parties and in the manner listed below:

Via Email and First-Class Mail

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Heidi L. Wushinske
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Dated this 18th day of May, 2015.



Alan M. Seltzer, Esq.