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|  | **PENNSYLVANIA****PUBLIC UTILITY COMMISSION****Harrisburg, PA 17105-3265** |  |

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|  | Public Meeting held October 3, 2019 |
| Commissioners Present: |  |

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|  Gladys Brown Dutrieuille, Chairman |
|  David W. Sweet, Vice Chairman |
|  Andrew G. Place |
|  John F. Coleman, Jr. |
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| Petition for Waiver of ARD Operating, LLC, regarding the use of unconventional pipeline material in a Class II regulated area of Cogan House Township, Lycoming County, Pennsylvania | P-2019-3010368 |

**ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for disposition is the Petition of ARD Operating, LLC (ARD) for Waiver (Petition), waiving several federal regulations involving intrastate pipelines. By this Petition filed on February 19, 2019, ARD requests that the Commission issue a special permit allowing ARD to use an unconventional pipeline material, “FlexSteel”, in place of conventional steel pipelines in a Class 2 regulated area[[1]](#footnote-1). The Class 2 regulated area where ARD seeks to install and use the FlexSteel material is Cogan House Township, Lycoming County. The proposed installation would occur on 2.4 miles of right of way and consist of 4.8 miles of FlexSteel pipe, gathering natural gas from an existing stranded well pad. Any waiver granted by the Commission will be conditional on the affirmance of the waiver by the Office of Pipeline Safety (OPS), U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA).

On August 14, 2019, ARD served the Petition on the Office of Small Business Advocate, the Commission’s Bureau of Investigation and Enforcement, and the Office of Consumer Advocate. No Answers to ARD’s Petition were filed. In light of the facts asserted in ARD’s request, we will grant the Petition for Waiver under the terms and conditions of this Order.

**BACKGROUND**

 ARD is an independent natural gas exploration and production company operating in the Marcellus Shale of Northeastern Pennsylvania. ARD owns and operates more than 300 miles of natural gas midstream gathering pipelines in Lycoming, Clinton, and Centre Counties.

 In its February 19, 2019 Petition, ARD proposes to install FlexSteel pipe and fittings over 2.4 miles of existing right of way. The pipe would gather natural gas from the Michael J. Fulkerson Pad (Pad), located at 494 Cogan House Rd. in Cogan House Township. ARD avers that the right of way is 60-ft. wide with road crossings on State Route 184, Cemetery Rd, and Taylor Road. ARD also asserts that the land located north of the proposed project is mountainous and forested, while the land to the south is largely farmed agricultural fields. The wells on the Fulkerson property were drilled in 2012 by Anadarko Petroleum Corporation but have since been abandoned. According to ARD, because of the pad’s remote location relative to the rest of its gathering lines, traditional steel pipe is not “economically feasible in this application.” *Petition* at 2. ARD asserts that it has safely operated infrastructure consisting of spoolable FlexSteel and carbon steel pipe installed within the last ten years. As such, it hopes to use the same technology to gather the natural gas from the Pad in a safe, economically feasible manner.

 Through its Petition, ARD seeks a waiver of several sections of the Federal Code of Regulations found in 49 C.F.R. § 192. ARD asserts, *inter alia*, that the regulations in § 192 were not written to apply to FlexSteel and are thus ill-suited to regulate FlexSteel pipelines.

The precise federal regulations that ARD seeks to waive in its Petition provide detailed criteria regarding the design and usage of flexible steel pipe. *See* *generally* 49 C.F.R. § 192. Specifically, ARD seeks a special permit waiving the following sections of the Pipeline Safety Regulations:

1. Section 192.53;
2. Section 192.55;
3. Section 192.105;
4. Section 192.107;
5. Section 192.109;
6. Section 192.111;
7. Section 192.113;
8. Section 192.144;
9. Section 193.149;
10. Section 192.150; and
11. Section 192.619.

ARD avers, generally, that the existing regulations referenced above were not written with FlexSteel in mind; thus, are inapplicable to FlexSteel entirely.

**DISCUSSION**

 Minimum pipeline standards are established by the federal government at 49 C.F.R. §§ 190-199 (Pipeline Safety Regulations). On December 22, 2011, Former Governor Corbett signed Act 127, which became effective on February 20, 2012. Act 127 mandates compliance with the “Federal pipeline safety laws,”[[2]](#footnote-2) and also extends jurisdiction to the Commission to implement and enforce certain federal standards set forth in Title 49 of the Pipeline Safety Regulations. 58 P.S. §§ 801.302; 801.501.

The specific federal regulations that ARD seeks to have waived provide detailed criteria regarding the design and usage of steel pipe. *See* 49 C.F.R. § 192. Waiver of the federal standards by a State agency are permitted under the following circumstances: (1) when it is not practical for an operator to comply with a regulation of general applicability; and (2) when the State agency finds that the granting of such a waiver is not inconsistent with pipeline safety and is justified.[[3]](#footnote-3) The Commission previously granted a waiver of the federal requirements for Fiberspar composite pipe material, finding use of such material to be a reliable alternative to steel pipe and in the public interest.[[4]](#footnote-4) Requests for waiver granted by the Commission are also subject to PHMSA affirmance as well as periodic testing and monitoring.

State agencies are required to notify PHMSA in writing by registered or certified mail of each waiver the state grants and to provide the following information: (1) the name, address, and telephone number of the applicant (here, ARD Operating, LLC); (2) the safety regulation involved (here, 49 C.F.R. § 192); (3) a description of the pipeline facilities involved; (4) the justification for approving the waiver; and (5) a copy of the State agency’s order or letter to the applicant. PHMSA may affirm the waiver explicitly but may also condition a waiver on additional testing or other requirements, or, PHMSA may affirm the waiver by taking no action within sixty days of the entry of an agency’s order or letter.

A Petition for Waiver of a Commission regulation must set forth clearly and concisely the petitioner’s interest, the relevant legal authority, the purpose of the petition, and the facts claimed to constitute the grounds requiring waiver of the regulation. 52 Pa. Code § 5.43(a). The Commission may grant a petition for waiver that is in the public interest under the Commission’s statutory authority to rescind or modify regulations or orders. *See* 66 Pa. C.S. § 501(a).

ARD contends that FlexSteel pipe represents both a technological and economic alternative to conventional steel pipe. Moreover, according to the Petition, FlexSteel has proven reliable and operated since 2010 without leaks or safety issues.

To satisfy PHMSA requirements and the Commission’s regulations regarding waivers, ARD submits with its Petition the following items:

1. FlexSteel design codes, including a description of how FlexSteel is designed in accordance with various industry standards and specifications, a FlexSteel pipe stress and strain analysis with the relevant maximum applied loads, and a cyclic fatigue analysis of FlexSteel’s polymer layers with design pressures between 730 psi and 550 psi.

2. A comprehensive description of FlexSteel pipe design characteristics, including its high-density liner, steel tensile armor, and extruded external polymer outer sheath.

3. A report of FlexSteel’s fittings, including an extensive accounting of design specifications and fitting materials used.

4. A description of how FlexSteel is installed in compliance with 49 CFR § 192.327 and 49 CFR § 192.505.

5. Specifications for how the proposed FlexSteel pipeline will be operated and maintained, including a plan for establishing the maximum allowable operating pressure, a description of FlexSteel’s cathodic protection, a description of how ARD plans to monitor the FlexSteel pipeline, and a reporting system in which ARD proposes to provide extensive data at prescribed intervals.

6. An accounting of other FlexSteel projects that have been approved for special permits in Texas, California, and Alberta, Canada, including a brief description of the testing procedure and results for the FlexSteel project in Alberta.

 7. A map of the proposed FlexSteel pipeline route.

Additionally, ARD contends that FlexSteel is a proven, safe, reliable alternative to conventional steel pipe that has been installed and utilized in high-pressure natural gas pipeline systems since 2010 without incident. As such, ARD believes that is a safe and appropriate substitute for traditional steel pipelines in regulated Class 2 areas.

**CONCLUSION**

We find that granting ARD’s Petition for Waiver under the terms and conditions of this Order are in the public interest. ARD’s FlexSteel pipelines have a reliable history, operating without leaks or safety issues since 2010. ARD contends that it would be economically impractical for ARD to comply with federal regulations and similar regulations have been granted because FlexSteel is a viable alternative to conventional steel pipe. As evidenced by ARD’s Petition, the waiver has reasonable conditions and limitations and the use of FlexSteel piping will have equal or greater safety than steel piping; **THEREFORE,**

 **IT IS ORDERED:**

1. That the Petition of ARD Operating, LLC for Waiver of sections of 49 C.F.R. § 192, is granted under the terms of this Order, conditioned on affirmance by the Office of Pipeline Safety, U.S. Department of Transportation, and the Pipeline and Hazardous Materials Safety Administration.
2. That this Order granting waiver be sent, by registered or certified mail, to the Pipeline and Hazardous Materials Safety Administration in accordance with 49 U.S.C. § 60118.
3. That waiver is limited to the proposed pipeline in Cogan House Township, Pennsylvania, gathering natural gas from the Michael J. Fulkerson Pad on an existing 2.4 mile stretch of right of way.
4. That a copy of this Order be served on the Office of Consumer Advocate, the Office of Small Business Advocate, and the Commission’s Bureau of Investigation and Enforcement and docketed at P-2019-3010368.

**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: October 3, 2019

ORDER ENTERED: October 3, 2019

1. Defined by the Pipeline & Hazardous Material Safety Administration (PHMSA), a Class 2 regulated area is “any location with more than 10 but fewer than 46 buildings intended for human occupancy within 220 yards on either side of the centerline of any continuous one-mile length of pipeline.” [↑](#footnote-ref-1)
2. The “Federal pipeline safety laws” are as follows: (1) those provisions of 49 U.S.C. Ch. 601 (relating to safety; (2) the Hazardous Liquid Pipeline Safety Act of 1979; (3) the Pipeline Safety Improvement Act of 2002; and (4) the regulations promulgated under the acts. *See* 58 P.S. § 801.102. [↑](#footnote-ref-2)
3. *See In re: Application of Renewco-Meadow Branch, LLC For a Special Permit to Install Glass Reinforced Epoxy (GRE) Thermoset Pipe*, Tennessee Regulatory Utility Commission Docket No. 10­00195, Order Approving Request for Waiver dated January 13, 2011; 2011 Tenn. PUC LEXIS 5, citing, Pipeline Hazardous Materials Safety Administration, Guidelines for States Participating in the Pipeline Safety Program, Chapter 3, Revised December 2007. [↑](#footnote-ref-3)
4. *See* *Petition of Johnstown Regional Energy, LLC for Waiver of Federal Regulations involving Intrastate Pipelines and Continued Operation of Segments of Natural Gas Pipelines in Cambria and Somerset Counties*, Pennsylvania Public Utility Commission, Docket No. P-2014-2457138, Order Approving Request for Waiver dated December 18, 2014. [↑](#footnote-ref-4)